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Report to Congressional Requesters

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May 1988

U.S. COMMISSION ON CIVIL RIGHTS

Concerns About Commission Operations

GAO/GGD-88-71

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

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May 26, 1988

The Honorable Strom Thurmond
United States Senate

The Honorable Orrin G. Hatch
United States Senate

The Honorable F. James Sensenbrenner, Jr.
House of Representatives

The Honorable William D. Dannemeyer
House of Representatives

The Honorable Michael Dewine
House of Representatives

This report responds to your request that we review certain aspects of the U.S. Commission on Civil Rights from 1978 through 1985. The Commission was originally created by the Civil Rights Act of 1957 (Public Law 85-315) as a temporary executive branch agency. It continued to operate into 1983 through a series of extensions of its authorization. In that year, Congress authorized the formation of a reconstituted Commission (Public Law 98-183, Nov. 30, 1983) changing the number, appointment method, and terms of the Commissioners but maintaining the Commission's responsibilities as outlined in previous legislation. At the time of your request, we were reviewing the Commission's activities for fiscal years 1983 through the first quarter of 1986, as requested by four House committee and subcommittee chairpersons. You asked that we expand the House chairpersons' request to include fiscal years 1978 through 1982.

Our work for the House chairpersons involved 13 areas of concern they raised about the Commission. We were requested to examine specific information or answer specific questions related to the concerns. While you did not have specific concerns about the Commission's operations during the fiscal year 1978 to 1982 period, we agreed to examine the same areas that we covered in our review of the Commission's operations for the House chairpersons. That review generally covered fiscal years 1983 through the first quarter of 1986. Thus, this report generally covers Commission operations for fiscal years 1978 through the first quarter of 1986, including the information developed earlier for the House chairpersons. We did not update our previous work to include subsequent developments at the Commission.

Our review of available records and interviews of Commission officials was done primarily at Commission headquarters in Washington, D.C. To identify records applicable to the earlier years, we also reviewed documents the Commission had in storage at the federal records centers in Suitland, Maryland, and Seattle, Washington. We also interviewed officials of the Office of Personnel Management (OPM) and the General Services Administration (GSA), including its Inspector General, on their areas of involvement with Commission operations. We did not verify the accuracy or completeness of the information we obtained from the Commission. Our audit work, done between May 1986 and April 1987, was made in accordance with generally accepted government auditing standards. More details on our scope and methodology are discussed in the appendixes.

The limited availability of records seriously hampered our ability to develop complete information for several of the areas of concern. For periods before fiscal year 1983, the Commission's recordkeeping guidelines did not require retention of most records, and generally they were not retained. For fiscal year 1983 and later years, some of the records that should have been available were missing or incomplete. Also, retention of employees' Official Personnel Folders is not required once an employee leaves the agency.

Our findings for the 13 areas of concern, insofar as available records would allow, are summarized below and discussed in detail in the appendixes.

- Employment Trends. It was alleged that the Commission hired noncareer employees (temporaries, consultants, and Schedule C appointees) in lieu of career employees. Schedule Cs are confidential or policy-determining positions. We were requested to examine staffing levels, determine career vacancies, and determine the numbers and salary costs of noncareer employees.

  Overall staffing levels at the Commission decreased during the 8-year period. We found that noncareer employees averaged 71 percent of total appointments for the earlier years (from the second quarter of fiscal year 1978 through fiscal year 1982) and 78 percent during the later years (fiscal years 1983 through the first quarter of 1986). On average, noncareer employees represented 12 percent of the work force for fiscal years 1978, 1980, and 1982, and 18 percent for 1983 through 1985. Total salary cost for noncareer employees, as a percentage of total salaries, increased each year for fiscal years 1983 through 1985. Salary data

were not available before 1983. Career vacancies in fiscal years 1978, 1980, and 1982 averaged 13 percent of total authorized positions, compared to 15 percent in 1983 through 1985 (see app. I).

- Hiring and Use of Consultant, Temporary, and Schedule C Employees. Concerns were expressed that consultants were hired to do the work of career staff. We were requested to determine whether (1) applicable hiring guidelines were followed for noncareer employees, (2) consultants' duties overlapped with those of career staff, and (3) consultants also held contracts with the Commission.

  We could not assess whether applicable hiring guidelines were followed for noncareer employees in the earlier years because relevant records were limited. However, Official Personnel Folders that were available for four consultants lacked position descriptions, which are required by OPM. Also, we found that the Commission did not use qualification standards and appointments were not properly documented for two Schedule C employees for whom Official Personnel Folders were available. For the later years, we found violations of OPM requirements on all 74 of the consultant, temporary, and Schedule C appointments we reviewed. We found indications in personnel files that five consultants were doing the duties of career staff. It is illegal for consultants to function as career staff. We found two consultants who also had concurrent contracts with the Commission during fiscal years 1978 and 1979 and two consultants who also had concurrent contracts during fiscal years 1983 through 1985. It is not illegal for consultants to hold concurrent contracts (see app. II).

- Referrals from State Employment Service Offices. It was alleged that the Commission did not hire qualified applicants referred by the Washington, D.C., employment service office. We were requested to determine whether the employment office was notified of job vacancies, the number of persons referred by the office, and the number of referrals hired.

  Records were not available, nor was their retention required, on whether the Commission complied with applicable laws and regulations requiring notice of employment openings to state employment offices in the earlier years. The Commission's files in the later years did not show it had provided the mandatory notice to the District and other employment service offices for any of the 13 temporary appointments requiring such notice that were available for our review. However, a Commission official said the required notices were sent and referrals, which he did

not identify, were received. He said three of the referrals were found to be qualified but none were selected (see app. III).

- Affirmative Action. It was alleged that white males constituted most of the employees hired since December 1, 1983. We were requested to determine the extent to which affirmative action was taken to hire and promote minorities and women. We were also requested to determine the length of service for employees who left the Commission after December 1, 1983.

  Data on the sex and race composition of the Commission's work force are maintained by fiscal year. Excluding consultants and temporaries for whom data were not maintained, we found that minorities and women were the majority of employees hired and promoted during both the earlier and later years. Minorities and women represented 87 percent of employees hired and 86 percent of employees promoted during the earlier years. Minorities and women represented 71 percent of employees hired and 79 percent of employees promoted during the later years. The average length of service for all employees who left the Commission between December 1, 1983, and December 31, 1985, was about 69 months. Data on the length of service were available for 42 percent of those who left between January 1, 1978, and September 30, 1982. Their length of service was about 57 months (see app. IV).

- Awards and Promotions. Concern was expressed that employees hired after December 1, 1983, were receiving more frequent and prompt awards and promotions than employees hired earlier. We were requested to examine the number of awards and promotions that went to career employees and noncareer appointees hired before and after December 1, 1983, and whether any employees received more than one promotion or award within any 1-year period.

  During the later years, 11 employees received one or more awards less than 1 year after receiving a previous award, with 1 employee receiving 3 awards in less than a year. All of these individuals were career employees who had been hired by the Commission before December 1, 1983. Because of incomplete records, we could not determine if any employees received multiple awards in any 1 year during the earlier years.

  The majority of award recipients after December 1, 1983, were career employees who were employed by the Commission before that date. In fiscal year 1985, employees hired after December 1, 1983, received 25

percent of the awards, which was generally in proportion to their population.

Most of the promotions in the later years went to employees hired before December 1, 1983, until the first quarter of fiscal year 1986. In that quarter, six of the nine promotions went to employees hired after December 1, 1983. We found that during the earlier years 92 percent of the promotions went to career employees compared to 69 percent during the later years.

During fiscal year 1978 through the first quarter of fiscal year 1986, 15 employees were promoted without serving 1 year in the prior grade, but 14 of them were in positions exempt from the 1 year service requirement that applies to promotions in general. Five of these promotions occurred in the earlier years and 10 during the later years. One nonexempt promotion after less than 1 year occurred in the earlier years, but the employee served only 1 day less than the required 1 year in grade (see app. V).

- Commissioners' and Special Assistants' Billings. The current Chairman and his Special Assistant were allegedly filling part-time positions but billing the Commission on a full-time basis. We were requested to examine the billings made by the Commissioners and their Special Assistants, determine how the billings compare with part-time positions, and determine whether the tasks for which the Special Assistants were billing reflected the nature of work expected of them.

  Complete billing records were generally available for the Commissioners since the beginning of fiscal year 1980. For Special Assistants, billing records were generally available since the beginning of fiscal year 1983. We found there were no limitations on the amount of time Commissioners and their Special Assistants could work during the 8-year period. During fiscal years 1980 through 1982, the Commissioners, excluding the former Chairman, billed a yearly average of 64 days each. During the later years, the Commissioners, excluding the current Chairman, billed a yearly average of 58 days each. The current Chairman billed an average of 235 days yearly, while the former Chairman billed an average of 126 days yearly. Special Assistants, during the later years, billed a yearly average of 146 days. For the Special Assistants, we found the nature of work reported in 1985, the year we selected for review in the later years, was generally consistent with their position descriptions. Data were not available to determine the nature of Special Assistants' work in the earlier years (see app. VI).

- Financial Disclosure Reports. Concern was expressed that the current Chairman and his Special Assistant were receiving almost full-time compensation from the Commission while also being employed elsewhere. We were requested to examine financial disclosure reports to determine the proportion of Commissioners' and Special Assistants' total income derived from the Commission.

  Financial disclosure reports were available for 10 of the 27 Commissioners and Special Assistants who served at the Commission during fiscal years 1978 through 1985, including the current and former Chairmen and the current Chairman's Special Assistant. We could not determine the proportion of the Commissioners' total income to their Commission salary before fiscal year 1983 because retention of salary data was not required and they were not available. We found the current Chairman's Commission income represented no more than 50 percent of his total income and for his Special Assistant it was no more than 81 percent. In no instance did the financial disclosure reports show the 10 Commissioners and Special Assistants relied on the Commission as their sole source of income in either the earlier or later years (see app. VII).

- Commission Travel. The Commissioners' and Special Assistants' travel allegedly increased during the later years. We were requested to examine travel vouchers for the Commissioners, Special Assistants, Staff Directors, and Office of General Counsel staff; ascertain the policy for Commissioners' travel; and compare the extent of travel before and after December 1, 1983.

  We reviewed the Commission's travel data on a fiscal year basis, for 1978 and 1981 through 1985. Data were not available for fiscal years 1979 and 1980. We found that each Commissioner has a blanket travel authorization allowing travel anywhere within the continental United States. The Commissioners averaged the same number of trips each year in the years we reviewed. Special Assistants averaged 19 trips annually during fiscal years 1984 and 1985, compared to an average of 6 trips a year before 1984. The Staff Directors averaged 18 trips a year during fiscal years 1984 and 1985 and 11 trips a year before 1984. During fiscal years 1978 and 1981 through 1983, the Office of General Counsel staff averaged 47 trips a year compared to 8 trips a year in 1984 and 1985. We also found 31 instances in fiscal years 1984 and 1985 and 29 instances before 1984 of sources outside the Commission paying for Commissioner and staff travel expenses. Forty-five of these 60 instances were for the current Chairman's travel. Such payments by outside sources except institutions exempt from taxation under 26 U.S.C.

§501(c)(3) constitute an unauthorized augmentation of the Commission's appropriations. While we did not attempt to verify the tax status of the organizations that paid Commission travel expenses, several of these organizations clearly were not tax exempt under 26 U.S.C. §501(c)(3). Also, there was no written authorization for acceptance of travel payments in any of the 60 instances as required by OPM regulations (see app. VIII).

- Appropriations. It was alleged that the Commission may have violated its fiscal year 1985 congressionally imposed line item appropriations. In fiscal year 1985, Congress appropriated funds to the Commission by budget activity, in effect establishing separate line item appropriations for each budget activity. We were requested to examine the Commission's allocation of costs among the various budget activities.

  We could not conclude whether the Commission complied with the line item appropriations because of the way that they were established, the discretion that the Commission had in allocating costs, and the poor condition of the Commission's budget records. Records were not available to show how the Commission allocated costs among the budget activities before 1985 (see app. IX).

- Lobbying. A concern was expressed that the current Chairman may have violated federal antilobbying restrictions. We were requested to examine specific correspondence, provided by the House requesters, from the current Chairman to Members of Congress and written speeches given by the current Commissioners. We were not provided any specific correspondence to review for the former Chairman, and only limited records were available on Commissioners' speeches during the earlier years.

  We found no violation of antilobbying restrictions with the current Chairman's correspondence. Statements made by the current Chairman in 10 speeches appeared to represent the type of remarks the antilobbying restrictions applicable to federal employees attempt to limit. While the Chairman did not explicitly request members of the public to contact their elected representatives, the context of the speeches made clear that the listener was being urged to do so. On the basis of available records, we identified no remarks by the other Commissioners during the period covered by our review that raised the same concern (see app. X).

- State Advisory Committees. It was alleged that the membership criteria and role of state advisory committees had changed in the later years. We were requested to examine the nominating and selection process for the 1985 committee rechartering; determine the trend in the number of committee reports; and determine whether the relationship between the Commission's regional offices and the committees changed after the rechartering.

  The selection process for the committee members changed in 1985 with the headquarters' officials nominating about half of those selected. Before the 1985 rechartering, Commissioners selected the committee members and chairpersons mainly on the basis of recommendations from the Commission's regional offices. According to 9 of 12 Commission regional office officials interviewed, the rechartered committees obtained less input from regional office staff in identifying issues to examine. More committee reports were issued and meetings held in the earlier years. As an alternative form of output, in 1985 the committees began preparing briefing memoranda, which are informal, unpublished, internal documents that describe for the Commissioners the results of local community forums (see app. XI).

- Commission Automobile. It was alleged that a Commission automobile was used for other than official purposes. We were requested to determine whether automobile use was consistent with governing regulations.

  All trip logs necessary for us to examine whether automobile use was consistent with governing regulations in both the earlier and later years were not available. Where trip logs were available, automobile use appeared to be consistent with regulatory requirements (see app. XII).

- Contracting. It was alleged that contractors were doing the work of career staff. We were requested to examine the extent of work contracted by the Commission, including whether contracts were subject to competitive bidding.

  We examined Commission contracts for mission-related functions covering fiscal years 1978, 1979, 1984, and 1985. Contracts not directly related to the mission of the agency, such as typewriter repair and supplies, were excluded from our review. We were unable to determine if the Commission complied with competitive contracting regulations for 10 contracts during fiscal years 1978 and 1979 because records were incomplete. For fiscal years 1984 and 1985, two contracts were also of

sufficient amounts to be subject to competitive contracting requirements. One of the contracts was competitively awarded, the other was not. The file for the noncompetitive contract did not document that the conditions for a noncompetitive award were met. Fiscal years 1984 and 1985 had the largest dollar amount of mission-related contracts and also a slightly larger amount as a percentage of total Commission obligations, but fiscal years 1978 and 1979 had the largest number of mission-related contracts (see app. XIII).

Agency Comments and Our Evaluation

The Chairman of the Commission commented on a draft of this report on January 29, 1988 (see app. XIV). The Chairman believed that evidence in the report refutes allegations that management and administrative improprieties occurred at the Commission, particularly since 1983. According to the Chairman, the report shows there has been little difference in Commission policy or practice since 1978 in such areas as (1) hiring, promotion, and awards; (2) the composition of state advisory committees; (3) the compensation of the Chairman and other Commissioners; (4) the work of Special Assistants to the Commissioners; (5) use of a Commission automobile; and (6) contracting. We believe there have been differences since 1978 in some of the above areas. In other areas complete information was not available to determine if differences existed.

While there were minor differences in the percent of noncareer hires to total hires between fiscal years 1978 and 1985, for the later years we found violations of OPM requirements for all 74 noncareer appointments we reviewed. For the earlier years, records were limited but we found violations of OPM requirements for 6 of 34 appointments we reviewed. For the later years career staff received 69 percent of promotions compared to 92 percent in the earlier years. Awards data were not available for 1978 to 1981, and only limited data were available for 1982. We found minorities and women were the majority of employees hired and promoted during both the earlier and later years.

Differences in the characteristics of state advisory committee members between 1979 and 1985 include an increase in white membership from 45.8 percent to 58.9 percent and a decrease in female membership from 47.2 percent to 35.3 percent.

Compensation of the Commissioners is based on billable days. The current Chairman billed an average of 109 days more than the former Chairman. The Chairman's letter attributed the difference in large part

to travel time to and from Commission headquarters in Washington, D.C., and his residence in California, while the former Chairman resided in the Washington area. We agree that the additional travel required by the location of the Chairman's residence contributed to the greater number of days he billed, but we could not determine from Commission records the number of days billed solely for this reason.

Excluding the Chairmen, Commissioners in the later years billed a yearly average of 6 days less than the Commissioners in the earlier years, an insignificant difference.

Data were not available to determine the nature of the Special Assistants' work in the earlier years; therefore, no comparison could be made between the earlier and later years. Records were not available in both the earlier and later years to determine whether use of the Commission's automobile was consistent with governing regulations.

Mission-related contracts in fiscal years 1984 and 1985 totaled $929,754 compared to $711,057 in fiscal years 1973 and 1979. This represented a slightly larger percentage of total obligations in the later years. In fiscal years 1984 and 1985 the Commission had 622 mission-related contracts compared to 844 in fiscal years 1978 and 1979.

The Chairman also said the report presented no evidence that the Commission operated illegally or inappropriately. In the areas of hiring and use of noncareer employees, we found violations of OPM requirements. We found statutory violations in the area of Commission travel. We also believe the Chairman's speeches contain the type of remarks the antilobbying restrictions applicable to federal employees attempt to limit.

The Chairman said that there have been new developments concerning Commission management and administration since the period covered by our review. These include hiring new budget and personnel staff, using personal computers for recordkeeping, and contracting with the Department of Agriculture's National Finance Center for various administrative services. We did not review the Commission's operations beyond the first quarter of fiscal year 1986 and, therefore, have no basis to comment on the Chairman's statements.

As arranged with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days

from the date of the report. At that time we will send it to interested parties and make copies available to others upon request.

Rosslyn S. Kleeman
Senior Associate Director

Contents

Letter		1
Appendix I Employment Trends		18
	Objectives, Scope, and Methodology	18
	Background	18
	Staffing Levels and Career Vacancies	19
	Appointments and Salary Costs	19
Appendix II Hiring and Use of Consultant, Temporary, and Schedule C Employees		28
	Objectives, Scope, and Methodology	28
	Adherence to Hiring Guidelines in the Later Years	29
	Adherence to Hiring Guidelines in the Earlier Years	34
	Consultants Serving as Contractors	35
Appendix III Referrals From State Employment Service Offices		36
	Objectives, Scope, and Methodology	36
	Number of Referrals	36
Appendix IV Affirmative Action		37
	Objectives, Scope, and Methodology	37
	Minorities and Women Hires and Promotions	37
	Employees Leaving the Commission	38
Appendix V Awards and Promotions		44
	Objectives, Scope, and Methodology	44
	Awards to Career and Noncareer Employees	44
	Promotions to Career and Noncareer Employees	45
	Awards and Promotions to Employees Hired Before and After December 1, 1983	45
	Employees Receiving More Than One Award or Promotion in a 1-Year Period	45

Appendix VI Commissioners' and Special Assistants' Billings		49
	Objectives, Scope, and Methodology	49
	Limitation on Commissioners' and Special Assistants' Billings	50
	Commissioners' and Special Assistants' Billings	50
	Special Assistants' Duties	51
Appendix VII Financial Disclosure Reports		54
	Objectives, Scope, and Methodology	54
	Background	54
	Commissioners' and Special Assistants' Reported Income	55
Appendix VIII Commission Travel		56
	Objectives, Scope, and Methodology	56
	Commissioners' Travel Policy	56
	First-Class and Overseas Travel	57
	Commission Travel Paid by Other Sources	57
	Travel by Commissioners, Special Assistants, and Staff Directors	59
	Office of General Counsel Travel	59
Appendix IX Appropriations		63
	Objectives, Scope, and Methodology	63
	Background	63
	Shifting Among Line Item Appropriations	63
	Third Hearing in Fiscal Year 1985	64
	Year-End Reconciliation	67
	Commission Obligations by Budget Activities, Fiscal Years 1978 to 1985	69
Appendix X Lobbying		71
	Objectives, Scope, and Methodology	71
	Background	71
	Chairman's Letters to Members of Congress	72
	Speeches	72
	Equal Rights Amendment Studies	73

Appendix XI State Advisory Committees 75
Objectives, Scope, and Methodology 75
Background 75
Committee Rechartering and Diversity of Membership 76
Regional Office Assistance and Role of the Advisory Committees 78
Advisory Committee Reports 78

Appendix XII Commission Automobile 83
Objectives, Scope, and Methodology 83
Warehouse and Staff Director Automobiles 83

Appendix XIII Contracting 85
Objectives, Scope, and Methodology 85
Mission-Related Contracts 85

Appendix XIV Comments From the U.S. Commission on Civil Rights 91

Tables
Table I.1: Number of Staff by Type and Location, 1978-1985 20
Table I.2: Staffing by Commission Unit, September 1978 21
Table I.3: Staffing by Commission Unit, October 1980 22
Table I.4: Staffing by Commission Unit, September 1982 23
Table I.5: Staffing by Commission Unit, October 1983 24
Table I.6: Staffing by Commission Unit, October 1984 25
Table I.7: Staffing by Commission Unit, September 1985 26
Table I.8: Consultant, Temporary, Schedule C, and Career Appointments in Fiscal Years 1978-1986 26
Table I.9: Salaries by Type of Staff, Fiscal Years 1983-1985 27
Table IV.1: Employees Hired by the Commission, Fiscal Years 1978-1986 39
Table IV.2: The Commission's Affirmative Action Hiring Goals and Achievements, Fiscal Years 1980-1985 40

Table IV.3: Commission Work Force Composition, End of Fiscal Years 1979-1985 42
Table IV.4: Promotion of Commission Employees, Fiscal Years 1978-1986 42
Table IV.5: Attrition of Commission Employees, Fiscal Years 1978-1986 43
Table V.1: Commission Awards, Fiscal Years 1982-1986 46
Table V.2: Recipients of Commission Awards, Fiscal Years 1982-1986 47
Table V.3: Promotion of Commission Employees, Fiscal Years 1978-1986 48
Table VI.1: Days Billed by Commissioners and Special Assistants, Fiscal Years 1979-1985 51
Table VI.2: Nature of Work Reported by Commissioners, Fiscal Years 1980 and 1985 53
Table VIII.1: Commissioners, Staff Directors, and Special Assistants Travel, Fiscal Years 1978-1985 60
Table VIII.2: Office of General Counsel Travel, Fiscal Years 1978 - 1985 62
Table IX.1: The Commission's Fiscal Year 1985 Appropriation 69
Table IX.2: Program Costs and Overhead Allocated to Budget Activities, Fiscal Year 1985 70
Table IX.3: Commission Obligations by Budget Activities, Fiscal Years 1978-1985 70
Table XI.1: Characteristics of State Advisory Committees, Fiscal Years 1979, 1981, 1982, and 1985 80
Table XI.2: Characteristics of State Advisory Committee Chairpersons 81
Table XI.3: State Advisory Committee Meetings, Fiscal Years 1978-1985 82
Table XI.4: State Advisory Committee Reports, Fiscal Years 1978-1985 82
Table XIII.1: Mission-Related Contract Obligations, Fiscal Year 1978 87
Table XIII.2: Mission-Related Contract Obligations, Fiscal Year 1979 88
Table XIII.3: Mission-Related Contract Obligations, Fiscal Year 1984 89
Table XIII.4: Mission-Related Contract Obligations, Fiscal Year 1985 90

Abbreviations

GAO	General Accounting Office
GSA	General Services Administration
OPM	Office of Personnel Management

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Employment Trends

It was alleged that the Commission hired consultant, temporary, and Schedule C employees instead of career staff, leaving career positions vacant.

Objectives, Scope, and Methodology

We were requested to examine the staffing levels, determine career vacancies for headquarters and regional offices, and determine the number of appointments and salary costs of consultant, temporary, and Schedule C employees.

We reviewed Commission staffing charts to determine staffing levels and career vacancies. Staffing charts were generally available for specific dates in fiscal years 1978 through 1985, but they were not available on a year-end basis. Therefore, we used staffing charts that were dated the closest to the end of each year. To determine staffing levels for consultants who were not included on the staffing charts, we also reviewed Standard Form 50s (Notification of Personnel Action) on each Commission appointment. The Form 50s were available for the second quarter of fiscal year 1978 through the first quarter of fiscal year 1986. We developed the staffing level data for fiscal years 1978, 1980, and 1982 in the earlier period.

We also reviewed the Standard Form 50s to determine the numbers and types of appointments on a fiscal year basis. We included initial appointments and conversions to new appointments, but we did not include extensions of appointments. Some employees hired had more than one appointment. Salary costs were obtained from various financial records for fiscal years 1983 through 1985. Salary data were not available before fiscal year 1983, and the Commission's records control schedule did not require their retention.

Background

The Commission hires employees under various types of appointment authorities; that is, career, temporary, Schedule C, and consultant. These appointment authorities are as follows:

Career

- a permanent appointment in the competitive service for which the appointee is either in career-conditional status or has met the service requirements for career tenure and has competitive status. The competitive service includes all civilian positions in the federal government that are not specifically excepted from civil service laws by statute, the President, or the Office of Personnel Management (OPM). Attorneys, who are

permanent appointments, are in the excepted service but included as career for purpose of our analysis.

Temporary

- a nonstatus appointment in either the competitive or excepted service for a specified period. The excepted service consists of those positions that are not in the competitive service.

Schedule C

- an appointment in the excepted service of a policy-determining or confidential nature.

Consultant

- a temporary or intermittent appointment in the excepted service to a position with advisory, rather than operational, responsibilities. Similar appointments are made for employees designated as "experts," but they can perform operational duties. We combined consultants and experts for purposes of our analyses in this appendix.

Staffing Levels and Career Vacancies

As shown in table I.1, the number of career staff decreased in headquarters and the regions over the September 1978 to September 1985 period, and in headquarters noncareer staff in all three categories increased. On average, noncareer staff represented 12 percent of the workforce for fiscal years 1978, 1980, and 1982, and 18 percent for 1983 through 1985. Data were not computed for fiscal years 1979 and 1981. In total, Commission staffing decreased during the period. Tables I.2 through I.7 show the staffing levels and career vacancies for headquarters and regional offices. Vacancies in fiscal years 1978, 1980, and 1982 averaged 13 percent of total authorized positions, compared to 15 percent in 1983 through 1985.

Appointments and Salary Costs

Table I.8 shows the number of consultant, temporary, Schedule C, and career appointments each year from the second quarter of fiscal year 1978 through the first quarter of fiscal year 1986. Although most staff were career employees, noncareer appointments averaged 71 percent of the new appointments for the earlier years and 78 percent for the later years.

Table I.9 shows salary costs of consultant, temporary and part-time, and Schedule C employees for fiscal years 1983 through 1985. As a proportion of total salaries, noncareer employees' salaries were 3.6 percent in 1983, 7.3 percent in 1984, and 9.7 percent in 1985.

Table I.1: Number of Staff by Type and Location, 1978-1985[a]

	Number of staff					
Employee type	**September 1978**	**October 1980**	**September 1982**	**October 1983**	**October 1984**	**September 1985**
Headquarters						
Career	190	180	156	146	139	125
Temporary	15[b]	13[c]	15[d]	13	17	22
Consultant	6	19[d]	3	9	19	25
Schedule C	2	7	2	3	11	9
Other[f]	5	7	6	7	12	11
Subtotal	**218**	**226**	**182**	**178**	**198**	**192**
Regions						
Career	76	77	72	67	62	58
Temporary	7[b]	7[c]	3[e]	3	4	5
Consultant	2	2[d]	0	0	0	0
Schedule C	0	0	0	0	0	0
Subtotal	**85**	**86**	**75**	**70**	**66**	**63**
Total	**303**	**312**	**257**	**248**	**264**	**255**

[a]Staffing levels by employee type were not computed for 1979 and 1981.

[b]As of October 11, 1978.

[c]As of September 9, 1980.

[d]As of September 30, 1980.

[e]As of October 1, 1982.

[f]Includes other noncareer employees: Commissioners, the Staff Director, employees at the Commission under an Intergovernmental Personnel Act agreement, and noncareer Senior Executive Service members. In December 1983, the number of Commissioners increased from six to eight with the passage of the U.S. Commission on Civil Rights Act of 1983.

Table I.2: Staffing by Commission Unit, September 1978

	Career	Temporary	Consultant	Schedule C	Other	Total filled positions	Vacancies	Total authorized positions
Headquarters' offices								
Commissioners	0	0	0	0	5	5	1	6
Staff Director[a]	33	4	1	2	0	40	10	50
General Counsel[b]	25	0	0	0	0	25	4	29
Research[c]	16	4	2	0	0	22	2	24
National Civil Rights Issues[c]	20	0	0	0	0	20	2	22
Program and Policy Review	34	3	3	0	0	40	7	47
Federal Civil Rights Evaluation	15	0	0	0	0	15	6	21
Management	47	4	0	0	0	51	5	56
Subtotal	**190**	**15**	**6**	**2**	**5**	**218**	**37**	**255**
Regions	76	7	2	0	0	85	4	89
Total	**266**	**22**	**8**	**2**	**5**	**303**	**41**	**344**

[a]Includes the Equal Opportunity Unit; the Congressional Liaison Unit, Public Affairs Unit, the Women's Rights Program Unit, which later became part of the new Office of Congressional and Public Liaison; the Regional Office Liaison, which became the Office of Regional Programs; and the Program Evaluation Unit, which became part of the new Program Planning and Evaluation Office. All of these later changes occurred in 1979.

[b]Includes the Solicitor's office.

[c]The Office of Research and Office of National Civil Rights Issues were later abolished in 1979, and most of their research functions transferred to the Office of Program and Policy Review. The staff of the Special Projects Division of the Office of National Civil Rights Issues became part of the new Office of Congressional and Public Liaison. Also, the library was transferred from the Office of Research to the Office of Management.

Table I.3: Staffing by Commission Unit, October 1980

	Career	Temporary	Consultant	Schedule C	Other	Total filled positions	Vacancies	Total authorized positions
Headquarters' offices								
Commissioners	0	0	0	0	6	6	0	6
Staff Director	3	1	1	6	1	12	0	12
General Counsel	26	3	1	0	0	30	3	33
Program and Policy Review	41	2	13	0	0	56	11	67
Equal Opportunity	2	0	0	0	0	2	1	3
Solicitor	3	0	0	0	0	3	1	4
Program Planning and Evaluation	7	0	2	0	0	9	4	13
Management	53	3	0	0	0	56	5	61
Regional Programs	5	1	1	0	0	7	1	8
Congressional and Public Affairs	21	2	1	1	0	25	5	30
Federal Civil Rights Evaluation	19	1	0	0	0	20	6	26
Subtotal	**180**	**13**	**19**	**7**	**7**	**226**	**37**	**263**
Regions	77	7	2	0	0	86	10	96
Total	**257**	**20**	**21**	**7**	**7**	**312**	**47**	**359**

Table I.4: Staffing by Commission Unit, September 1982

	Career	Temporary	Consultant	Schedule C	Other	Total filled positions	Vacancies	Total authorized positions
Headquarters' offices								
Commissioners	0	0	0	0	6	6	0	6
Staff Director	1	2	0	2	0	5	6	11
General Counsel	23	2	0	0	0	25	5	30
Program and Policy Review	33	4	2	0	0	39	7	46
Equal Opportunity	2	0	0	0	0	2	0	2
Solicitor	3	0	0	0	0	3	0	3
Program Planning and Evaluation	5	1	0	0	0	6	4	10
Management	45	5	0	0	0	50	5	55
Regional Programs	7	0	0	0	0	7	0	7
Congressional and Public Affairs	20	0	1	0	0	21	3	24
Federal Civil Rights Evaluation	17	1	0	0	0	18	4	22
Subtotal	**156**	**15**	**3**	**2**	**6**	**182**	**34**	**216**
Regions	72	3	0	0	0	75	8	83
Total	**228**	**18**	**3**	**2**	**6**	**257**	**42**	**299**

Table I.5: Staffing by Commission Unit, October 1983

	Career	Temporary	Consultant	Schedule C	Other	Total filled positions	Vacancies	Total authorized positions
Headquarters' offices								
Commmissioners	0	0	0	0	6	6	0	6
Staff Director	1	2	2	3	1	9	4	13
General Counsel	19	3	0	0	0	22	7	29
Program and Policy Review	34	1	4	0	0	39	2	41
Equal Employment Opportunity	2	0	0	0	0	2	0	2
Solicitor	3	0	0	0	0	3	0	3
Program Planning and Evaluation	5	1	0	0	0	6	1	7
Management	42	5	1	0	0	48	5	53
Regional Programs	5	0	1	0	0	6	2	8
Congressional and Public Affairs	18	1	1	0	0	20	3	23
Federal Civil Rights Evaluation	17	0	0	0	0	17	3	20
Subtotal	**146**	**13**	**9**	**3**	**7**	**178**	**27**	**205**
Regions	67	3	0	0	0	70	10	80
Total	**213**	**16**	**9**	**3**	**7**	**248**	**37**	**285**

Table I.6: Staffing by Commission Unit, October 1984

	Career	Temporary	Consultant	Schedule C	Other	Total filled positions	Vacancies	Total authorized positions
Headquarters' offices								
Commissioners	0	3	0	4	8	15	0	15
Staff Director	6	1	0	3	2	12	0	12
General Counsel	21	1	0	0	1	23	3	26
Programs and Policy[a]	3	3	19	2	1	28	0	28
Equal Employment Opportunity	2	1	0	0	0	3	0	3
Solicitor	3	0	0	0	0	3	0	3
Research[a]	28	0	0	0	0	28	5	33
Planning and Coordination[b]	4	0	0	0	0	4	0	4
Management	38	6	0	0	0	44	6	50
Regional Programs	5	1	0	0	0	6	1	7
Congressional and Public Affairs	17	0	0	2	0	19	0	19
Federal Civil Rights Evaluation	12	1	0	0	0	13	7	20
Subtotal	**139**	**17**	**19**	**11**	**12**	**198**	**22**	**220**
Regions	62	4	0	0	0	66	10	76
Total	**201**	**21**	**19**	**11**	**12**	**264**	**32**	**296**

[a]In July 1984, the Office of Program and Policy Review was separated into the Office of Research and the Office of Programs and Policy.

[b]The Office of Program Planning and Evaluation was abolished and a new Planning and Coordination Unit was established in July 1984.

Table I.7: Staffing by Commission Unit, September 1985[a]

	Career	Temporary	Consultant	Schedule C	Other	Total filled positions
Headquarters' offices						
Commissioners	0	0	0	4	8	12
Staff Director	5	4	0	2	0	11
General Counsel	21	1	0	1	1	24
Programs and Policy	5	7	25	2	2	41
Equal Employment Opportunity	2	0	0	0	0	2
Solicitor	3	0	0	0	0	3
Planning and Coordination	3	0	0	0	0	3
Management	36	8	0	0	0	44
Research	16	0	0	0	0	16
Regional Programs	6	1	0	0	0	7
Congressional and Public Affairs	14	0	0	0	0	14
Federal Civil Rights Evaluation	14	1	0	0	0	15
Subtotal	**125**	**22**	**25**	**9**	**11**	**192**
Regions	58	5	0	0	0	63
Total	**183**	**27**	**25**	**9**	**11**	**255**

[a]Unlike earlier years the Commission said it did not maintain position authorization and vacancy data by office in 1985. However, the Commission's fiscal year 1987 budget submission showed 55 unfilled permanent career positions at the end of fiscal year 1985.

Table I.8: Consultant, Temporary, Schedule C, and Career Appointments in Fiscal Years 1978-1986

Types of appointment	1978[a]	1979	1980	1981	1982	1983	1984	1985	1986[b]
Noncareer									
Consultant	18	18	31	12	7	5	29	7	0
Temporary	54	92	62	32	60	27	63	51	10
Schedule C	2	6	2	3	1	1	10	4	5
Subtotal	**74**	**116**	**95**	**47**	**68**	**33**	**102**	**62**	**15**
Career	40	48	45	27	5	10	33	12	5
Total	**114**	**164**	**140**	**74**	**73**	**43**	**135**	**74**	**20**

[a]Since January 1, 1978.

[b]Through December 31, 1985.

Table I.9: Salaries by Type of Staff, Fiscal Years 1983-1985[a] (In Thousands)

Type of appointment	1983	1984	1985
Temporary and part-time[b]	$201.7	$312.0	$452.0
Consultant	29.3	78.4	30.0
Schedule C	49.6	164.7	303.2[d]
Subtotal	**280.6**	**555.1**	**785.2**
Other employees[c]	7,432.6	7,066.9	7,322.8
Total compensation	**$7,713.2**	**$7,622.0**	**$8,108.0**

[a]Comparable salary data for fiscal years 1978-1982 were not available.

[b]The Commission could not separate the salaries of temporary and part-time employees. However, a Commission official estimated that 90-95 percent of the part-time employees were also temporary employees.

[c]Also includes other compensation, such as awards for all employees. Any awards given to consultants, temporary, and Schedule C employees are included in these amounts.

[d]While the numbers of Schedule Cs were similar for specific points in time in 1984 and 1985, as shown in tables I.6 and I.7, the salaries almost doubled in fiscal year 1985 for reasons such as their being employed for a greater portion of the year, promotions, and a greater number employed during the year.

Hiring and Use of Consultant, Temporary, and Schedule C Employees

Concerns were expressed that consultants were hired to do work that should have been done by career employees and were doing work for which they were not hired. It was also alleged that consultant appointees concurrently held consultant contracts with the Commission and received compensation in both capacities at the same time.[1] The Commission was also alleged to have generally circumvented merit competition procedures in hiring noncareer employees.

Objectives, Scope, and Methodology

We were requested to examine the use of consultant, temporary, and Schedule C employees at the Commission to determine whether (1) applicable hiring guidelines were followed for those employees, (2) consultants' duties overlapped with those of career staff, and (3) consultants also held contracts with the Commission.

We reviewed all available Official Personnel Folders for the three types of noncareer appointments, commission quarterly reviews of consultants, applicant supply files (agency-established registers) for temporaries, and OPM files on Schedule C employees to determine whether applicable hiring guidelines were followed. We also reviewed the Official Personnel Folders and quarterly reviews to determine work done by consultants. To identify any individuals who held both consultant appointments and consultant contracts, we reviewed the Standard Form 50s to determine dates of employment, time and attendance records to determine actual days worked, and contract files to determine the inclusive dates of the contracts.

Records necessary to determine the consultants' duties and whether applicable hiring guidelines were followed for noncareer employees were very limited for fiscal years 1978 through 1982. According to the Commission's records control schedule, retention of such records was generally not required. Records were incomplete for the period after fiscal year 1982, although the Commission's records control schedule generally required retention of such records. The noncareer appointments that we reviewed were for individuals who were either still employed by the Commission or whose employment was recent enough that their personnel files were still available at the Commission. In total we were able to review 34 of 400 noncareer appointments in the earlier years (second

[1] Agencies may acquire consultant services either by contracting with organizations or individuals or by appointing individuals as temporary or intermittent employees.

quarter of fiscal year 1978 through fiscal year 1982) and 74 of 212 non-career appointments in the later years (fiscal year 1983 through the first quarter of fiscal year 1986).

Time and attendance records for consultants were not available before fiscal year 1983, nor was their retention required. Although contract files were available for fiscal years 1978 through 1985, we only reviewed 2 years of contracts in the earlier years because of the large number of contracts involved.

Adherence to Hiring Guidelines in the Later Years

We found violations of OPM employment requirements on all 74 non-career appointments for which records were available in the later years.

Consultants

We found violations of OPM required procedures for each of the 31 consultant appointments we were able to review. Forty-one consultant appointments were made during the later years.

OPM defines consultant and consultant position in its Federal Personnel Manual as follows:

"Consultant means a person who serves primarily as an adviser to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. A consultant provides views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions (23 Comp. Gen. 497). Generally, a consultant has a high degree of broad administrative, professional, or technical knowledge or experience which should make the advice distinctively valuable to the agency."

"A consultant position is one which primarily requires performance of advisory or consultant services, rather than performance of operating functions."

The statutory authority to hire consultants is found in 5 U.S.C. §3109, which permits the head of an agency to hire consultants when authorized by an appropriation or other statute. The Commission is granted this authority by its own statute, found in 42 U.S.C. §1975d.

None of the consultants' files we reviewed contained a statement of the consultant's duties and responsibilities as required by OPM. OPM requires

a description of the position be maintained in the Official Personnel Folder in enough detail to show that the position actually requires a consultant's services.

None of the files contained the required certification that the consultant's Statement of Employment and Financial Interests had been reviewed and that no conflicts of interest had been found.

In this respect, because all 31 of these consultants were intermittent, 130-day limited appointments, they are regarded as "special government employees" and are subject to many of the laws and regulations on ethics and financial disclosure applicable to regular government employees. Therefore, the Federal Personnel Manual requires agencies to permanently retain in the Official Personnel Folders for such consultants certifications that financial disclosure statements have been reviewed and determinations made that no conflict of interest exists.

We found that three consultants worked full-time and another worked mostly full-time for the duration of their intermittent appointments.

In defining an intermittent appointment as "occasional or irregular employment," the Federal Personnel Manual cautions "if at any time it is determined that the employee's work is no longer intermittent in nature, the employment must be terminated immediately."

Consultant Duties Overlapped With Those of Career Staff

At least five of the consultants appeared to be performing operating duties, such as managing a Commission project or supervising career employees. Under GAO decisions and OPM's Federal Personnel Manual, it is illegal for consultants to function as career staff. Our conclusions for these consultants were based on evidence in personnel files or documents relating to their selection for other appointments. In one instance, a consultant's file contained a memorandum stating that he would serve as advisor to the Assistant Staff Director for Congressional and Public Affairs; he actually was acting as Editor of the Commission's publication, Perspectives, at the time. If editorial work was performed, it may be considered operational work of the office, not advisory. The consultant was the Commission's former Director of the Press and Communications Division and editor of Perspectives. Because of incomplete records it was not possible to make these determinations for the other 26 consultants we reviewed.

Temporaries

We found that violations of OPM requirements may have occurred in all 23 temporary appointments we reviewed. There were 151 temporary appointments in the later years. These included instances of insufficient documentation in announcement files of how applicant ratings were derived and failure to properly document the appointments in other respects as required by OPM.

Unlike consultant appointments, which are excepted from the competitive service, the temporary appointments we reviewed are subject to the statutes, regulations, and principles governing competitive appointments in the federal service. Agencies must observe the merit principles of open competition, fair evaluation of qualifications, and selection solely on the basis of merit and fitness in making temporary appointments.

Agencies have considerable discretion in choosing the method to be used for filling competitive positions. With few exceptions, competitive appointments, whether permanent or temporary, are made from registers of qualified applicants who have been evaluated by OPM and ranked on the basis of their ratings for referral to agencies upon request. Appointments outside these registers are limited by OPM to such conditions as insufficient eligibles available for referral from OPM registers or delegation of specific authority to the agency by OPM. These exceptions permit temporary employment outside of OPM registers through the use of agency-established registers known as applicant supply files, provided that

(1) appropriate state job service and OPM offices are notified of the job openings,

(2) the appointee meets the qualification standard for the position, and

(3) the appointee comes within reach for selection as one of the best qualified applicants.

Agencies are also delegated authority to make noncompetitive, 30-day temporary limited appointments to meet "special needs." OPM specifies that special needs appointments are appropriate only when the legitimate needs of the agency "cannot be served through appointment under some existing authority" and include emergency conditions.

Under its delegated authority to make appointments outside OPM registers, the Commission made 91 temporary competitive service appointments for 72 individuals who were employed in the later years. Because of the nature of temporary employment, most of the individuals were no longer employed by the Commission and, consequently, their records were not at the Commission. We were able to review 23 appointments for 15 individuals who were currently employed by the Commission and/or whose personnel files were still available.

OPM requires that agencies making appointments outside OPM registers establish agency registers known as the applicant supply file system, which provides for acceptance, rating, and referral of applications on a systematic basis and in accordance with OPM standards and requirements. Although specifics on the system's operations are, to a large extent, left up to agencies, OPM requires that they have "detailed procedures" in agency policy. The Commission did not have such detailed procedures covering its temporary appointments.

Because the temporary appointments we reviewed are considered employment in the competitive service, appointees must meet the qualification standards for the positions. For this reason, OPM requires that announcements specify the standard to be used in making the determination of eligibility. Twelve of the 14 appointments requiring competitive qualification analysis lacked such documentation, and/or we found questionable appointee qualifications. The other nine temporary appointments did not require qualification analysis; eight were special needs appointments, exempt from examination processes; and one was based on an earlier appointment from a competitive register. However, in the latter case this was not documented.

Also, the appropriateness of the 23 appointments in other respects was not adequately documented. OPM requires that temporary appointments must not be made outside OPM registers to avoid merit principles; to extend other temporary appointments; or to make noncompetitive appointments pending completion of examining, referral, or other competitive processes. The Commission did not document the unusual circumstances for any of the 8 special needs appointments, and the other 15 appointments were so procedurally flawed that the appropriateness of all 23 appointments was questionable. We found instances of (1) no evidence of appropriate state employment services and OPM offices being notified of the openings, (2) applications not being date-stamped to show when they were received, (3) insufficient information in vacancy

announcements on the qualifications required and application procedures to be followed, (4) insufficient documentation in announcement files of how applicant ratings were derived, (5) announcements without opening dates, (6) an application being accepted after the closing date of the announcement, and (7) failure to publish vacancy announcements.

Schedule C Employees

In the later years we reviewed, we found that qualification standards were not used and the appointments were not properly documented as required by OPM for any of the 20 Schedule C appointments for 17 individuals.

The Federal Personnel Manual requires that agencies establish qualification standards before appointing employees to excepted service positions. According to an OPM representative, Schedule C positions are covered by this requirement. Qualification standards are necessary to establish selection criteria for these appointments in a manner in keeping with the government's policy of equal employment opportunity and the specific limitations on the Schedule C appointment authority imposed by OPM. The Commission did not establish qualification standards for its Schedule C appointments. Therefore, we were unable to assess the appropriateness of the appointments or the appointees' qualifications for the positions.

The Commission also did not properly document its employment actions on Schedule C appointments. None of the personnel action documents cited the OPM assigned position numbers. Also, personnel action documents for three promotions and two appointments of Schedule C employees did not cite the proper authority for the actions as required by OPM. The three promotions were effective before OPM approval. An OPM representative told us that of the two appointment actions in question, one was properly authorized by OPM but he could not confirm that OPM had approved the other. The OPM representative also told us that agencies should use the OPM assigned position numbers. Because the Commission did not cite the OPM assigned position numbers on the personnel action documents, we could not verify from Commission records whether OPM authorized any of the actions. Also, we could not verify whether the employees were performing the duties approved by OPM.

Further, the variety of appointments and other personnel actions used by the Commission to promote and move employees between Schedule C and other positions also indicated questionable use of the Commission's employment authority.

For example, after holding a consultant appointment for 3 months, one individual was appointed to a Schedule C, GS-13 position as Special Assistant to the Staff Director. Then, at 5-month intervals, the employee was promoted to GM-14 and GM-15, Schedule C positions, and 7 months later to a noncareer Senior Executive Service, ES-3 position. This rapid rise represented an 83-percent increase in salary in only 17 months.

Another employee was converted to a Schedule C appointment as a GS-12 Confidential Special Assistant after a series of temporary appointments. This employee's Schedule C conversion resulted in an 84 percent pay increase over the GS-7 salary held under the temporary appointments for just over a year.

Promotions for Schedule C employees are not subject to the 1 year time-in-grade restriction generally applicable to federal employees. However, OPM reminds agencies that the purpose of the restriction is to prevent excessively rapid promotions. Also, agencies should not permit in their promotion programs excessively rapid promotions for positions not subject to the general restrictions.

Adherence to Hiring Guidelines in the Earlier Years

We found violations of OPM-required procedures for 6 of 34 noncareer appointments in the earlier years (the second quarter of fiscal year 1978 through fiscal year 1982) for which records were available. Records for the other 28 appointments were too limited for us to determine whether OPM requirements were followed.

Official Personnel Folders were available for 23 noncareer employees at the Commission during the earlier years. During this period, 400 noncareer appointments were given to 289 different people. The 23 noncareer employees whose folders we reviewed represented 34 appointments: 4 consultant, 23 temporary, and 7 Schedule C. We found no OPM required position descriptions for any of the four consultants whose files were available. Three of the consultants were later appointed as Commissioners. Also, we found that qualification standards were not used and appointments were not properly documented, as required by OPM, for two of the Schedule C appointments: the Special Assistant to the current Chairman and a Special Assistant to a current Commissioner. We were not able to determine whether the other 23 temporary and 5 Schedule C appointments complied with applicable OPM guidelines, because applicant supply files and other records containing information on the circumstances of the appointments had not been retained.

In a previous review of personnel actions during the 1980 to 1981 Presidential transition, GAO found that OPM, as a result of allegations, investigated five instances in which excepted service (noncareer) employees were converted to career positions at the Commission.[2] The investigation showed that three of the noncareer employees (two Schedule C employees and one Senior Executive Service limited emergency appointee) were former career employees who were reinstated to positions in the competitive service at a higher grade than they had previously held. According to OPM instructions, former career employees may be noncompetitively reinstated to a competitive service position but not at a grade level higher than they had previously held. Commission officials acknowledged the impropriety of the conversions and took action to assign the individuals to positions at the appropriate grade levels.

Consultants Serving as Contractors

We reviewed all contracts in Commission files for fiscal years 1978, 1979, and 1983 through 1985 to determine whether any individuals employed by the Commission as consultants were also paid as contractors. Consultants may hold concurrent contracts; however, it is illegal to be paid twice for performing the same work. We identified six individuals during 1978 and 1979 and five individuals during 1983 through 1985 who had both consultant appointments and contracts with the Commission. Two individuals during the earlier period and two during the later period had consultant appointments and contracts during concurrent time periods. However, on the basis of the records we reviewed for the two individuals in 1984 and 1985, we could not determine if they were paid in both capacities during the same time period. Records were not available, nor was their retention required by the Commission's records control schedule, that would enable us to determine whether the two individuals in 1978 and 1979 were paid in both capacities at the same time. For these reasons, we were unable to pursue whether the individuals were paid twice for performing the same work under both consultant appointments and contracts.

[2]Personnel Conversions During Presidential Transition: Improved Monitoring Needed (GAO/FPCD-81-51, May 27, 1981).

Referrals From State Employment Service Offices

It was alleged that the Commission did not hire qualified applicants for vacant positions referred by the Washington, D.C., employment service office.

Objectives, Scope, and Methodology

We were requested to determine whether the Commission notified the Washington, D.C., employment service office of job vacancies, the number of persons referred by the employment office, and the number of referrals hired by the Commission.

We reviewed available applicant supply files for temporary competitive service vacancy announcements to determine which of these announcements should have been sent to the state employment service offices. Applicant supply files were not available before fiscal year 1983, nor did the Commission's records control schedule require their retention. Files were available for 23 temporary appointments during fiscal year 1983 through the first quarter of fiscal year 1986.

Number of Referrals

Federal agencies are required by 5 U.S.C. §3327 to notify state employment service and OPM offices of any temporary vacancies that are to be filled in the competitive service without use of OPM's employment registers. Thirteen of the 23 temporary appointment actions we were able to review met this criterion. Documentation of such notification is required by OPM's Federal Personnel Manual. It requires that "Agencies will maintain information and records in such a manner that review at any time by representatives of OPM will disclose whether there has been compliance with the civil service rules and regulations, and OPM's instructions." This requirement places the burden of evidence of compliance on the Commission. Without such documentation, it is not possible to determine whether the Commission complied with the statute. The Commission's written administrative instructions do not address the notification requirement.

The applicant supply files for the 13 appointments we reviewed did not contain documentation on whether the vacancy announcements were sent to the District office and other employment service offices. The Commission's Personnel Officer said, however, that the Commission received a total of 26 referrals from employment service offices for vacancies at the Commission during the period October 1984 to December 1985. From the information he provided, we were unable to identify the positions for which the referrals were received. According to the Personnel Officer, 3 of the 26 referrals were qualified applicants but none were selected.

Affirmative Action

It was alleged that the Commission made no attempt to ensure that minorities and women were included in the applicant pool for jobs and that most employees hired since December 1, 1983, were white males.

Objectives, Scope, and Methodology

We were requested to determine the extent to which affirmative action was taken to hire and promote minority and women employees. We were also requested to determine the length of service with the Commission for employees who left the Commission after December 1, 1983.

We reviewed affirmative action hiring goals and accomplishment reports and the Commission's Equal Employment Opportunity Unit files for fiscal years 1978 through 1985 to determine whether the hiring goals were achieved and to obtain race and sex data on employees hired and work force composition.

Data on the race and sex of employees hired during fiscal year 1981 were not available in the Commission's affirmative action report. For that year, we reviewed the Standard Form 50s to identify the employees hired and determined their race and sex through discussions with Commission officials. For employees hired in the first quarter of fiscal year 1986, we used the same sources. Standard Form 50s were available from the second quarter of fiscal year 1978 through the first quarter of fiscal year 1986.

We also reviewed the Standard Form 50s to identify the employees who were promoted and those who left the Commission. Commission officials provided data on the race and sex of these employees and the dates those who had left commenced employment at the Commission. Length of service data was limited before fiscal year 1983; however, the Commission's records control schedule did not require retention of such data.

Minorities and Women Hires and Promotions

As shown in table IV.1, the majority of employees hired by the Commission during fiscal years 1978 through the first quarter of 1986, exclusive of consultants and temporaries for whom sex and race data were not maintained, were minorities and women. Minorities and women represented 87 percent of employees hired during the earlier years (fiscal years 1978 through 1982) and 71 percent during the later years. However, the Commission did not achieve all of the specific hiring goals set in its affirmative action plans for fiscal years 1980 through 1985. According to the Commission's Equal Employment Opportunity officer, goals were not required for fiscal years 1978 and 1979. Table IV.2

shows the Commission's hiring goals and achievements during the period.

Data on the sex and race composition of the Commission's work force are maintained by fiscal year. Affirmative action goals are determined by comparing the profile (numbers of women and members of minority groups) in the agency with the profile of the Washington, D.C., metropolitan area civilian labor force. Work force profile data at the end of each fiscal year are shown in table IV.3.

As shown in table IV.4, minorities and women also received most of the promotions granted to Commission employees during each fiscal year from 1978 through the first quarter of 1986. Minorities and women represented 86 percent of employees promoted during the earlier years and 79 percent during the later years.

Employees Leaving the Commission

Table IV.5 shows the number of employees who left the Commission during the second quarter of fiscal year 1978 through the first quarter of 1986. Sixty employees left the Commission from December 1, 1983, through December 31, 1985. From January 1, 1978, through November 30, 1983, 213 employees left. On an annual average basis, more people left the Commission before December 1983. The average length of service for all employees (excluding temporaries and consultants) who left the Commission between December 1, 1983, and December 31, 1985, was about 69 months. Length of service data were available for 42 percent of those who left between January 1, 1978, and September 30, 1982. Their average length of service was about 57 months.

Table IV.1: Employees Hired by the Commission, Fiscal Years 1978-1986[a]

	1978	1979	1980	1981	1982	1983	1984	1985	1986[b]
Vacancies filled	37	51	32	18	5	9	46	18	9
Vacancies filled by:									
White male	6	5	4	2	1	1	14	6	3
White female	7	14	7	2	2	2	11	5	5
Black male	5	5	5	4	1	1	6	1	0
Black female	7	14	9	6	1	2	12	5	1
Hispanic male	6	6	3	1	0	0	0	0	0
Hispanic female	1	4	3	3	0	2	3	1	0
Asian American/Pacific Islander male	2	2	0	0	0	0	0	0	0
Asian American/Pacific Islander female	3	0	1	0	0	1	0	0	0
American Indian/ Alaskan Native female	0	1	0	0	0	0	0	0	0
Male	19	18	12	7	2	2	20	7	3
Female	18	33	20	11	3	7	26	11	6

[a]Includes all permanent-type employees and excludes consultants and temporary employees

[b]Through December 31, 1985

Table IV.2: The Commission's Affirmative Action Hiring Goals and Achievements, Fiscal Years 1980-1985[a]

	1980		1981		1982	
Job category	**Goals**	**Achievements**	**Goals**	**Achievements**	**Goals**	**Achievements**
Professional	1 American Indian/ Alaskan Native male 1 American Indian/ Alaskan Native female 1 Black female	2 Black females	1 American Indian/ Alaskan Native	0	1 American Indian/ Alaskan Native	0
Administrative	1 American Indian/ Alaskan Native male	0	1 American Indian/ Alaskan Native male	0	1 Hispanic male 1 Asian American/ Pacific Islander	12 Hispanic males/ 3 Asian American/ Pacific Islander males/ 3 Asian American/ Pacific Islander females
Technical	No goals		No goals		No goals	
Clerical	No goals		No goals		1 White female 1 Asian American/ Pacific Islander female	1 White female
Other	No goals		No goals		No goals	

1983		1984		1985	
Goals	**Achievements**	**Goals**	**Achievements**	**Goals**	**Achievements**
1 American Indian/ Alaskan Native	0	1 Black male 1 Asian American/ Pacific Islander or American Indian/ Alaskan Native	0	1 White female 1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native	2 White females
1 Hispanic male 1 Asian American/ Pacific Islander	0	1 Hispanic male 1 Asian American/ Pacific Islander or American Indian/ Alaskan Native	0	1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native	0
No goals		1 White female 1 Asian American/ Pacific Islander or American Indian/ Alaskan Native	1 White female	1 White female 1 American Indian/ Alaskan Native	0
1 White female 1 Asian American/ Pacific Islander female	1 White female	1 Hispanic male 1 Asian American/ Pacific Islander or American Indian/ Alaskan Native	0	1 Hispanic male 1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native	0
No goals		No goals		No goals	

[a]Goals were not required for fiscal years 1978 and 1979.

Table IV.3: Commission Work Force Composition, End of Fiscal Years 1979-1985[a]

	1979	1980	1981	1982	1983	1984	1985
White male	41	41	38	35	32	39	37
White female	46	45	41	39	36	33	27
Black male	40	37	39	34	32	30	26
Black female	97	97	88	83	80	78	70
Hispanic male	15	16	15	14	14	11	11
Hispanic female	19	19	18	16	16	16	16
Asian American/Pacific Islander male	5	5	5	5	4	3	3
Asian American/Pacific Islander female	6	4	4	3	3	3	3
American Indian/Alaskan Native male	0	0	0	0	0	0	0
American Indian/Alaskan Native female	2	2	1	1	0	0	0
Male	101	99	97	88	82	83	77
Female	170	167	152	142	135	130	116

[a]Data not maintained for consultants and temporaries.

Table IV.4: Promotion of Commission Employees, Fiscal Years 1978-1986[a]

	1978[b]	1979	1980	1981	1982	1983	1984	1985	1986[c]
White male	3	12	7	5	3	2	2	7	1
White female	11	19	17	8	3	2	2	8	2
Black male	6	11	4	8	2	3	6	2	0
Black female	12	24	20	14	9	6	12	5	3
Hispanic male	3	2	1	1	0	0	1	2	0
Hispanic female	2	3	4	5	1	0	4	0	0
Asian American/Pacific Islander male	0	1	3	0	0	0	0	1	0
Asian American/Pacific Islander female	0	4	3	0	1	0	0	0	0
American Indian/Alaskan Native male	0	1	0	0	0	0	0	0	0
American Indian/Alaskan Native female	1	0	0	0	0	0	0	0	0
Male, race unknown	0	2	0	1	0	0	1	1	2
Female, race unknown	2	0	1	0	1	0	0	2	1
Male	12	29	15	15	5	5	10	13	3
Female	28	50	45	27	15	8	18	15	6

[a]Does not include consultants.

[b]Since January 1, 1978.

[c]Through December 31, 1985.

Table IV.5: Attrition of Commission Employees, Fiscal Years 1978-1986[a]

	1978[b]	1979	1980	1981	1982	1983	1984[c]	1985	1986[d]
Total	**42**	**33**	**41**	**28**	**20**	**22**	**46**	**32**	**9**
White male	2	3	6	4	4	4	8	4	3
White female	6	10	8	6	2	5	15	8	0
Black male	6	5	6	2	5	2	7	5	2
Black female	11	5	9	9	4	5	12	13	1
Hispanic male	3	3	2	3	1	1	2	0	1
Hispanic female	6	1	2	2	2	2	2	1	2
Asian American/Pacific Islander male	1	1	0	0	0	1	0	1	0
Asian American/Pacific Islander female	0	1	2	1	1	1	0	0	0
American Indian/Alaskan Native female	0	1	0	0	0	1	0	0	0
Male, race unknown	3	1	3	0	0	0	0	0	0
Female, race unknown	4	2	3	1	1	0	0	0	0
Male	15	13	17	9	10	8	17	10	6
Female	27	20	24	19	10	14	29	22	3

[a]Does not include temporaries and consultants

[b]Since January 1, 1978

[c]Includes 27 Commission employees who left between October 1, 1983, and November 30, 1983, immediately before the Commission was reconstituted

[d]Through December 31, 1985

Awards and Promotions

A concern was expressed that employees hired after December 1, 1983, were receiving more frequent and prompt awards and promotions than employees hired before that time.

Objectives, Scope, and Methodology

We were requested to (1) identify how many awards and promotions went to career and noncareer employees; (2) examine the pattern of awards and promotions given to employees hired before and after December 1, 1983; and (3) determine whether any employees received more than one promotion or award within a 1-year period.

Commission officials provided us listings of awards by employee, amount, and type for fiscal year 1983 through the first quarter of fiscal year 1986; some awards data were also obtained from the Standard Form 50s. Listings of awards data were not available before fiscal year 1983, nor did the Commission's records control schedule require their retention. We reviewed the Standard Form 50s available for the second quarter of fiscal year 1978 through fiscal year 1982 to obtain awards data for these years. We obtained promotion data from the Standard Form 50s for the second quarter of fiscal year 1978 through the first quarter of 1986.

Awards to Career and Noncareer Employees

Three types of awards were included in our analyses: (1) special achievement awards; (2) quality step increases; and (3) merit pay or, beginning in fiscal year 1985, Performance Management and Recognition System cash awards. Special achievement awards are granted for either a one-time special act, service, or achievement or sustained superior performance. Quality step increases serve to recognize individuals for sustained high-quality performance. Merit pay or Performance Management and Recognition System awards parallel the incentive awards provisions for other employees but are available only to employees in grades GM-13 to GM-15.

The Standard Form 50s showed no awards given to Commission employees during fiscal years 1978 to 1981. However, special achievement awards are not documented on the Standard Form 50s. Table V.1 shows the information available on numbers and amounts of awards granted by the Commission for fiscal years 1982 through the first quarter of 1986. Table V.2 shows the awards for career and noncareer (temporary and Schedule C) employees during this period and also shows the awards given to employees hired before and after December 1, 1983. Consultants are generally not eligible for awards.

Promotions to Career and Noncareer Employees

Table V.3 shows the number of promotions for career and noncareer (temporary and Schedule C) employees from the second quarter of fiscal year 1978 through the first quarter of fiscal year 1986. (We did not include consultants because they are paid on a daily rate.) The proportion of career promotions to total promotions was lower during the later years (fiscal years 1983 through the first quarter of fiscal year 1986). Career employees received 69 percent of the promotions and were 81 percent of the work force[1] in the later years, compared to 92 percent of the promotions during the earlier years when they represented 88 percent of the work force.

Awards and Promotions to Employees Hired Before and After December 1, 1983

The majority of award recipients after December 1, 1983, were career employees who were employed by the Commission before that date. In fiscal year 1985, employees hired after December 1, 1983, received 25 percent of the awards, which was generally in proportion to their population. However, they received over 30 percent of the total dollar amount of the awards given in fiscal year 1985 because their average award amounts were greater than for employees hired before December 1, 1983.

As shown in table V.3, most promotions at the Commission went to career employees and employees hired before December 1, 1983, until the first quarter of fiscal year 1986. In that quarter, six of the nine promotions went to employees hired after December 1, 1983, and five of the nine went to noncareer employees.

Employees Receiving More Than One Award or Promotion in a 1-Year Period

In the later years, 11 employees received one or more awards less than 1 year after receiving a previous award. One employee received three awards in less than a year. All of these individuals were career employees who had been hired by the Commission before December 1, 1983. Because the awards data were incomplete for the earlier year, we could not determine whether any employee received an award less than 1 year after receiving another award in the early years.

Over the period covered by our review, we found 15 Commission employees were promoted without serving 1 year in the prior grade, 5 in the earlier years and 10 in the later years. All but 1 of the 15 were in

[1]Work force computations for both earlier and later years exclude Commissioners, Staff Directors, employees at the Commission under an Intergovernmental Personnel Act agreement, and noncareer Senior Executive Service members.

groups exempt from the 1-year service requirement that normally applies to federal employee promotions. Career federal employees above GS-5 must serve at least 1 year in grade before becoming eligible for promotion. This restriction does not apply to promotions of employees in the excepted service, such as Schedule C, students (whose employment is dependent upon their being in school), or attorneys. The one promotion in less than 1 year to a nonexempt employee was to a career employee on September 20, 1981, who served 1 day less than 1 year in grade. For the 14 exempt employees, 5 were promotions to employees below GS-6, 2 to attorneys, 2 to students, and 5 to Schedule Cs.

Table V.1: Commission Awards, Fiscal Years 1982-1986

Total awards	**1982**	**1983**	**1984**	**1985**	**1986[a]**
Amounts	$8,670[b]	$15,317[c]	$77,541	$59,120	$6,950
Numbers	8[b]	27	51	28	8
Average amounts	$1,084[b]	$613	$1,520	$2,111	$869
Special achievement awards					
Amounts	N/A	$7,070	$33,976	$21,220	$6,950
Numbers	N/A	17	36	16	8
Average amounts	N/A	$471[c]	$944	$1,326	$869
Quality step increases					
Amounts	$1,120	$4,946	$0	$0	$0
Numbers	1	7	0	0	0
Average amounts	$1,120	$707	$0	$0	$0
Merit Pay/Performance Management and Recognition System[d]					
Amounts	$7,550	$3,301	$43,565	$37,900	$0
Numbers	7	3	15	12	0
Average amounts	$1,079	$1,100	$2,904	$3,158	$0

[a]Through December 31, 1985

[b]Does not include special achievement awards

[c]Does not include two special achievement awards of unknown amounts

[d]Merit pay began in fiscal year 1982, and the Performance Management and Recognition System began in fiscal year 1985

N/A = Not Available

Table V.2: Recipients of Commission Awards, Fiscal Years 1982-1986

Totals awards	1982[a]	1983	1984	1985	1986[b]
Number of awards	8	27	51	28	8
Number of recipients	8	27	45	28	8
Total amounts	$8,670	$15,317[c]	$77,541	$59,120	$6,950
Average amounts	$1,084	$613[c]	$1,520	$2,111	$869
Employees hired before December 1, 1983					
Amounts	$8,670	$15,317[c]	$75,391	$41,070	$5,950
Numbers	8	27	49	21	7
Average amounts	$1,084	$613[c]	$1,539	$1,956	$850
Employees hired after December 1, 1983					
Amounts	N/A	N/A	$2,150	$18,050	$1,000
Numbers	N/A	N/A	2	7	1
Average amounts	N/A	N/A	$1,075	$2,579	$1,000
Career employees					
Amounts	$8,670	$15,317[c]	$71,541	$54,370	$5,950
Numbers	8	27	48	25	7
Average amounts	$1,084	$613[c]	$1,490	$2,175	$850
Temporaries					
Amounts	0	0	$500	$4,750	0
Numbers	0	0	2	3	0
Average amounts	0	0	$250	$1,583	0
Schedule Cs					
Amounts	0	0	$5,500	0	$1,000
Numbers	0	0	1	0	1
Average amounts	0	0	$5,500	0	$1,000

[a]Does not include special achievement awards

[b]Through December 31, 1985

[c]Does not include two special achievement awards of unknown amounts

N/A Not Applicable

Table V.3: Promotion of Commission Employees, Fiscal Years 1978-1986

	1978[a]	1979	1980	1981	1982	1983	1984	1985	1986[b]
Totals	**40**	**79**	**60**	**42**	**20**	**13**	**28**	**28**	**9**
Number to									
career	38	69	57	39	18	10	22	18	4
noncareer	2	10	3	3	2	3	6	10	5
Number to									
employees hired before December 1, 1983	40	79	60	42	20	13	24	14	3
employees hired after December 1, 1983	N/A	N/A	N/A	N/A	N/A	N/A	4	14	6
Number of									
permanent promotions	34	52	54	30	11	8	15	21	3
temporary promotions	3	9	4	7	7	3	7	2	2
conversions from one type of appointment to another, resulting in promotion	3	17	2	3	2	1	6	4	4
other actions resulting in promotion	0	1	0	2	0	1	0	1	0

[a]Since January 1, 1978

[b]Through December 31, 1985

N/A Not Applicable

Commissioners' and Special Assistants' Billings

It was alleged that the current Chairman and his Special Assistant billed the agency on an almost full-time basis while such positions were supposedly part-time.

Objectives, Scope, and Methodology

We were requested to examine the Commissioners' and Special Assistants' billings and determine how the billings compare with part-time positions. We were also asked to examine the roles of the Commissioners' Special Assistants and to determine whether the tasks for which they billed the Commission reflected the nature of work expected from them.

We reviewed the Commission's authorization and appropriation acts to determine if any limitations existed on the number of days Commissioners or their Special Assistants can work. We also reviewed available salary vouchers and the Commission's Office of Management payment records for the Commissioners and Special Assistants.

We found instances in fiscal years 1983 and 1984 where there were no salary vouchers in the Commission's files to support salaries paid to the Special Assistants. For fiscal year 1985 we found instances where substantial variances existed between total days worked by Special Assistants, as reported on their salary vouchers, and the Office of Management's records of salary paid. Variances between these documents also existed for some of the Commissioners. In those cases where variances existed, we used the Office of Management payment records. Before fiscal year 1983, salary vouchers and Office of Management payment records were not available except for the Commissioners' salary vouchers for fiscal year 1980. The Commission's records control schedule did not require retention of these records. However, complete time and attendance records, although retention was not required, were available for the second quarter of fiscal year 1979 through fiscal year 1982 for 7 of the 10 Commissioners who served during that period.[1] We also obtained position descriptions for the Special Assistants to the Commissioners and the Special Assistant to the Chairman in fiscal year 1985. Special Assistant position descriptions were not available for the earlier years, nor did the Commission's records control schedule require their retention for all years reviewed.

[1]Salary vouchers show the hours billed and the nature of work performed. Time and attendance records show only the hours billed.

Limitation on Commissioners' and Special Assistants' Billings

Before fiscal year 1987, there was never a congressionally imposed limitation on the number of days Commissioners or their Special Assistants could work. Therefore, there was no requirement that they work any set work schedule. The Commission's fiscal year 1987 appropriation (Public Law 99-591) set annual maximums of 125 billable days for the Chairman, 75 billable days for the other Commissioners, and the equivalent of 150 billable days at the GS-11 salary level for Special Assistants.

Commissioners' and Special Assistants' Billings

On the basis of records we were able to review, the number of days billed by the Commissioners and their Special Assistants for fiscal years 1979 through 1985 are shown in table VI.1. Complete fiscal year billing records were available since 1980 for Commissioners and since 1983 for Special Assistants. The number of days billed represents the equivalent number of 8-hour days worked. For example, if a Commissioner worked 4 hours 1 day and 4 hours on another day, the total days billed would be 1 day. The Commissioners for whom the Special Assistants worked are noted next to the Special Assistant's name in table VI.1.

During fiscal years 1980 through 1982, the Commissioners, excluding the former Chairman, billed a yearly average of 64 days; in the later period (fiscal years 1983 through 1985), Commissioners, excluding the current Chairman, billed an average of 58 days yearly. The Chairman during the earlier period, Arthur S. Flemming, billed an average of 126 days a year while the current Chairman, Clarence M. Pendleton, Jr., billed an average of 235 days annually in the later period. Special Assistants during the later period billed a yearly average of 146 days, including the current Chairman's Special Assistant, who billed a yearly average of 213 days. We considered only time charges by Commissioners and their Special Assistants who served for an entire fiscal year in computing the yearly averages.

The nature of the work performed by the Commissioners as reported on their available salary vouchers fell into the following five broad categories:

- reading and commenting,
- speech preparation/correspondence,
- time in transit,
- meetings and speeches, and
- other.

Table VI.2 shows the proportion of time, as indicated by available salary vouchers, that Commissioners reported spending on each of these categories during fiscal years 1980 and 1985.

In some instances, the total time for a day was charged to several categories. In those cases, we divided the time evenly among the categories. However, when the individual was in transit and charged time to both in transit and other categories, we allocated all such time to in transit.

Special Assistants' Duties

We reviewed the position descriptions for the Special Assistants to compare the duties described with work reported on the Special Assistants' billings that were available for fiscal year 1985. Similar records for the Special Assistants were not available for the earlier period. We found the nature of work reported by five Special Assistants, including the Special Assistant to the Chairman (the only Special Assistants for whom salary vouchers showing the nature of their work were available), in fiscal year 1985 was generally in line with duties stated in their job descriptions. There were four other Special Assistants employed during fiscal year 1985 for whom the salary vouchers did not show the nature of their work, and one Special Assistant who, as a part-time Schedule C employee, was not required to submit salary vouchers.

Table VI.1: Days Billed by Commissioners and Special Assistants, Fiscal Years 1979 - 1985

Commissioners	1979[a]	1980	1981	1982	1983	1984	1985
Flemming [b]	76	132	119	64	•	•	•
Freeman [c]	NA	NA	•	•	•	•	•
Horn [b]	40	64	70	27	•	•	•
Ruiz [c]	NA	22	•	•	•	•	•
Saltzman [d]	43	50	54	47	46	2	•
Berry [e]	•	32	126	NA	97	59	50
Ruckelshaus [f]	•	17	60	37	51	6	•
Ramirez [g]	•	2	75	60	50	38	26
Smith [h]	•	•	•	27	42	7	•
Pendleton [i]	•	•	•	103	233	233	240
Abram [j]	•	•	•	•	•	39	41
Buckley [j]	•	•	•	•	•	43	69
Bunzel [j]	•	•	•	•	•	52	103
Destro [j]	•	•	•	•	•	64	76
Guess [j]	•	•	•	•	•	26	58

(continued)

Commissioners	1979[a]	1980	1981	1982	1983	1984	1985
Special Assistants [k]							
Novell (Pendleton) [l]	•	•	•	NA	221	179	239
Edwards (Berry) [m]	•	NA	NA	NA	261	63	99
Brown (Smith) [n]	•	•	•	•	15	2	•
Garza (Ramirez) [o]	•	•	•	NA	128	39	•
Arredondo (Ramirez) [p]	•	•	•	•	•	24	208
Ferrone (Abram) [q]	•	•	•	•	•	9	19
Van de Weighe (Destro) [r]	•	•	•	•	•	59	5
Bryant (Guess) [s]	•	•	•	•	•	•	137
Wolf (Abram) [t]	•	•	•	•	•	•	11
Stuart (Destro) [u]	•	•	•	•	•	•	90
Lawrence (Destro) [v]	•	•	•	•	•	•	12
Bratton (Buckley) [w]	•	•	•	•	•	•	50

NA: Not available

Days rounded to nearest full day.

[a]Data not available before January 1979.

[b]Appointment ended April 1982.

[c]Appointment ended July 1980. Days billed are for after January 12, 1980.

[d]Appointment ended October 1983.

[e]Appointed July 1980.

[f]Employed from July 1980 to November 1983.

[g]Appointed September 1980.

[h]Employed from April 1982 to November 1983.

[i]Appointed April 1982.

[j]Appointed December 1983.

[k]Special Assistants for Commissioners other than those listed could not be identified.

[l]Employed June 1982.

[m]Employed July 1980.

[n]Employed from November 1982 to November 1983.

[o]Employed from April 1982 to February 1984.

[p]Employed May 1984.

[q]Employed April 1984.

[r]Employed from May 1984 to May 1985.

[s]Employed from May 1984 to September 1985.

[t]Employed from November 1984 to September 1985.

[u]Employed from August 1984 to May 1985.

[v]Employed May 1985.

[w]Employed October 1984.

Table VI.2: Nature of Work Reported by Commissioners, Fiscal Years 1980 and 1985

Fiscal years in percent

	Reading and commenting		Speech prep./ correspondence		Time in transit[a]		Meetings and speeches		Other[b]	
Commissioners	**1980**	**1985**	**1980**	**1985**	**1980**	**1985**	**1980**	**1985**	**1980**	**1985**
Pendleton	•	12	•	19	•	31	•	26	•	12
Flemming	45	•	0	•	2	•	53	•	0	•
Abram	•	17	•	6	•	43	•	19	•	15
Berry	46	94	0	0	5	3	49	3	0	0
Horn	38	•	0	•	20	•	42	•	0	•
Buckley	•	41	•	1	•	28	•	20	•	10
Bunzel	•	48	•	2	•	23	•	18	•	9
Destro	•	15	•	16	•	10	•	53	•	6
Guess	•	76	•	2	•	9	•	4	•	9
Ramirez	•	19	•	0	•	18	•	8	•	55
Ruckelshaus	50	•	0	•	18	•	32	•	0	•
Ruiz	25	•	0	•	22	•	53	•	0	•
Saltzman	15	•	0	•	19	•	41	•	25	•

[a]Includes travel to and from Commission meetings as well as other Commission-related travel. All Commissioners, other than Berry, Destro, and Flemming, lived outside the Washington, D.C. area.

[b]Other includes such functions as media interviews, press conferences, and research.

Financial Disclosure Reports

Concern was expressed about how the Chairman and his Special Assistant could also be employed elsewhere and still receive almost full-time compensation from the Commission.

Objectives, Scope, and Methodology

We were requested to examine financial disclosure reports to determine the proportion of Commissioners' and Special Assistants' total income derived from the Commission.

Financial disclosure reports were available for 5 of the 11 Commissioners, including the current Chairman, who served during the later years (fiscal years 1983 through 1985); 2 of the 12 Special Assistants, including the current Chairman's Special Assistant, who also served in the later years; and 3 of the 4 Commissioners, including the former Chairman, who served only in the earlier years. We reviewed these reports to determine their reported income from sources other than the Commission. The reports were obtained from the Commission and the Office of Government Ethics. We obtained Commission salary data from Office of Management payment records for those individuals who served from fiscal years 1983 to 1985. Salary data were not available before fiscal year 1983, nor did the Commission's records control schedule require their retention.

Background

Requirements for the filing of public financial disclosure reports by executive branch officials are set forth in Title II of the Ethics in Government Act of 1978 and 5 C.F.R. 734. The purpose of these reports is to provide a means for federal employees to disclose their personal financial interests and demonstrate that they are able to carry out their duties without compromising the public trust. The review of the information provided in these reports serves to deter conflicts of interest for current employees and to identify potential conflicts of interest for newcomers to government service. Statements of income, assets, and liabilities must be filed by the President and Vice President; presidential appointees; members of the Senior Executive Service; employees in confidential or policymaking positions (Schedule C); career employees in grade GS-16 and above, including comparable officers in the uniformed and foreign services; and certain other employees.

The regulations require each individual who performs the duties of his or her position or office for a period in excess of 60 days during any calendar year to file a financial disclosure report on or before May 15 of the succeeding year. Although these reports are to be reviewed within

60 days of the filing date, the individual filing the report is responsible for its accuracy, and the reports are not routinely audited to determine whether the disclosures are correct.[1]

There are limitations on using financial disclosure reports for determining the amount of income received outside the government. While nongovernment salary and all other earned income must be reported exactly, dividends, rental income, interest income, capital gains, and income from trusts are stated in ranges that are too large to be meaningful for estimating income. For example, the report calls for stating such types of income in ranges between $15,001 and $50,000, $50,001 and $100,000, and over $100,000. Also, the financial disclosure reports are submitted on a calendar year basis, while the Commissioners' and Special Assistants' Commission salaries are documented for budgetary purposes on a fiscal year basis. Thus, there is a 3-month difference in the period covered. Additionally, honoraria are required to be reported only if they total more than $100 for each occurrence.

With an awareness of the limitations cited above, we attempted to determine the proportion of the Commissioners' and Special Assistants' total income represented by their Commission salaries. The basis for such an analysis was non-Commission income reported in the calendar year covered by their most recently filed financial disclosure statements and their Commission salaries for the comparable fiscal year.

Commissioners' and Special Assistants' Reported Income

No Commissioner or Special Assistant for whom financial disclosure reports were available reported relying on the Commission as a sole source of income.

Because the Commission could not provide salary data on Commissioners for the earlier years, we were unable to determine the proportion of their total income to their Commission salaries. Commission salary data is not reported on the financial disclosure report. For the later period, four Commissioners had a Commission salary of between 14 percent and 50 percent of their total income, including the current Chairman, whose salary was between 41 and 50 percent. One Commissioner's Commission salary was minimal in relation to total income. The Commission salary for the current Chairman's Special Assistant represented between 77 and 81 percent of total income, while the other Special Assistant's Commission salary represented between 35 and 59 percent.

[1]Since December 1, 1983, the appointment of Commissioners has not been subject to Senate confirmation. As a result, copies of their financial disclosure reports are no longer required to be transmitted to the Director, Office of Government Ethics.

Commission Travel

It was alleged that Commission travel increased during the later years, especially for Commissioners and Special Assistants.

Objectives, Scope, and Methodology

We were requested to (1) ascertain the policy for Commissioners' travel; (2) examine travel vouchers for the Commissioners, Special Assistants, Staff Directors, and Office of General Counsel staff to determine whether there were any overseas trips and first-class travel; and (3) compare the extent of travel for the Commissioners, Special Assistants, and Staff Directors, before and after December 1, 1983.

We reviewed the travel vouchers in Commission files for Commissioners, Special Assistants, Staff Directors, and Office of General Counsel staff during fiscal years 1978 and 1981 through 1985. Travel vouchers for fiscal years 1979 and 1980 were not available, nor did the Commission's records control schedule require their retention. We supplemented our review of the travel vouchers by examining the year-end status of expenditures reports for fiscal years 1982 through 1985 to determine the cost of trips taken. In those cases where variances existed, we used the status of expenditures reports. Thus, we gathered travel statistics on a fiscal-year basis. We reviewed the Commission's administrative instruction on travel and discussed Commission travel with General Services Administration (GSA) representatives, who are responsible for reviewing vouchers submitted by Commission personnel for compliance with travel regulations. The Commission contracts with GSA for certain administrative services, such as travel, payroll, and bill paying.

Commissioners' Travel Policy

During the period covered by our review, each Commissioner had a blanket travel authorization approved by the Staff Director allowing travel anywhere within the continental limits of the United States each fiscal year.

Commissioners and other employees are required to abide by GSA's travel regulations. For example, they are required to use contract fares, whenever possible. When no such fares exist, they are required to use coach or the lowest fare available unless emergency or extenuating circumstances, such as bad health and unavailability of contract or coach fares, necessitate the use of first class. We were advised by GSA officials that Commission personnel, including the Commissioners, Special Assistants, and Staff Directors, have generally been in compliance with GSA travel regulations, and only small amounts have been disallowed on individual vouchers over the years.

First-Class and Overseas Travel

We found that all cases where first-class travel was used complied with applicable GSA regulations. The former Chairman routinely flew first class, but the Commission only paid the coach or contract fare according to available records for fiscal years 1978, 1981, and 1982. During fiscal years 1984 and 1985, Commissioner Bunzel was approved by the Staff Director to fly first class for medical reasons. Other instances of first-class travel, 11 during fiscal years 1978 and 1981 through 1983 and 2 during fiscal years 1984 and 1985, were attributed to such reasons as health and unavailability of contract or coach fares.

We found two instances of foreign travel by Staff Directors. In fiscal year 1978, an acting Staff Director attended a meeting in Mexico City of the National Council of La Raza, a national Hispanic organization working for civil rights and economic opportunities. In fiscal year 1985, a Staff Director went to Israel to discuss affirmative action and civil rights issues with Israeli officials. In both cases, the Commission paid for the travel.

Commission Travel Paid by Other Sources

We found 60 instances in the 6 years we reviewed of outside sources paying for travel expenses. Of the 60 instances, 31 occurred in fiscal years 1984 and 1985, and 29 occurred during fiscal years 1978 and 1981 through 1983. Acceptance by a federal agency of donations from other sources for official travel may constitute an unauthorized augmentation of its appropriation. In 45 of the instances, 23 during fiscal years 1982 and 1983 and 22 during fiscal years 1984 and 1985, travel vouchers showed the current Chairman's travel and/or lodging expenses were paid by "other sources." Two other Commissioners (four instances in fiscal years 1981 and 1982) and four Commission employees (two instances in fiscal years 1981 and 1983 and nine instances in fiscal years 1984 and 1985), also had their travel expenses paid by outside sources.

Donations from private sources for government employees' official travel constitute an unauthorized augmentation of appropriations, unless the employing agency has statutory authority to accept gifts or the donor qualifies under 5 U.S.C. § 4111. Under 5 U.S.C. § 4111, enacted as part of the Government Employees Training Act, an employee may accept (1) contributions and awards incident to training in nongovernment facilities; or (2) payment of travel, subsistence, and other expenses incident to attendance at meetings only if the donor qualifies as a nonprofit, tax-exempt organization under 26 U.S.C. § 501(c)(3). Regulations promulgated by OPM at 5 C.F.R. 410.701 et seq.

require prior written authorization by the head of the agency or a designated representative for acceptance of such travel expenses. This authorization must certify that any contribution, award, or payment is not a reward for services to the organization before the training or meeting and that acceptance of any payment does not create an actual or apparent conflict.

The Office of Government Ethics has suggested certain procedures it considers essential to protect both the agency and the individual traveler from accepting gifts that improperly augment the agency's appropriations. These procedures are as follows:

- "All offers of payment of official travel expenses must be approved in writing prior to acceptance."
- "If possible, all offers should be approved by the same office within an agency so as to provide consistency of interpretation of applicable statutes and regulations."
- "All agency personnel should be made aware that such offers must be approved by the appropriate office."
- "Travel orders should note specifically what expenses are being accepted by the traveling employee and under what authority."
- "The traveling official should never be placed in a position of approving the acceptance of his or her own travel expenses."
- "If possible, a record of all travel expenses accepted should be kept by the agency in a central file."

We found that the Commission has no statutory authority to accept gifts. Therefore, unless the organizations that contributed to the Commissioners' and employees' travel qualified as nonprofit tax-exempt organizations under 26 U.S.C. § 501 (c)(3) and all other requirements of 5 C.F.R. 410.701 et seq. were met, the Commission travelers had no authority to accept such payments.

We asked the Commission's Solicitor, who was also the Commission's designated ethics official, what procedures were in effect to insure that the acceptance of travel expenses was not an improper augmentation of the agency's appropriation. He said that the Commission had no procedures (or files) on this matter, and he relied on the traveler's knowledge of the law to insure that donor organizations were nonprofit, tax-exempt institutions as described by 26 U.S.C. § 501(c)(3).

We also asked GSA officials whether they had included this issue in their review of Commission travel vouchers. They advised us they had not.

However, the Commission is responsible for ensuring that such unauthorized augmentations do not occur.

We requested from the Commission the exact name and state of incorporation for the 60 instances where sources other than the Commission paid travel expenses for Commission employees or where such sources were not identified. The Assistant Staff Director for Administration provided us with information that was too incomplete to enable us to determine whether each of the organizations identified qualified as a nonprofit, tax-exempt institution under 26 U.S.C. § 501(c)(3). However, our review of the information showed several instances of payments by outside sources that clearly are not tax-exempt under § 501(c)(3). Travel payments were made by an oil company, two television networks, and at least two political organizations. The Commission was not authorized to accept travel expense payments from these organizations. Also, none of the 60 instances of travel payments by outside sources was supported by the written authorization required by the OPM regulations as a condition to acceptance of payment.

Travel by Commissioners, Special Assistants, and Staff Directors

Table VIII.1 shows the travel expenses for the Commissioners, Staff Directors, and Special Assistants for the 6 years records were available. We reviewed the travel data on a fiscal year basis. The average annual total travel cost for the Commissioners was $39,994 (an average of 89 trips annually) in fiscal years 1978 and 1981 through 1983 and $59,469 (also an average of 89 trips annually) in fiscal years 1984 and 1985. For the Special Assistants, the average annual total travel cost was $4,021 (an average of 6 trips annually) in fiscal years 1978 and 1981 through 1983 and $13,073 (an average of 19 trips annually) in fiscal years 1984 and 1985. The Staff Directors averaged $4,070 annually (an average of 11 trips annually) in fiscal years 1978 and 1981 through 1983 and $6,662 annually (an average of 18 trips annually) in fiscal years 1984 and 1985.

Office of General Counsel Travel

As shown in table VIII.2, the number and cost of trips taken by the General Counsel staff diminished substantially over the years, particularly the number of mission-related trips, those for conducting research and hearings outside Washington, D.C. The number of General Counsel staff remained relatively constant over the period.

Commission Travel

Table VIII.1: Commissioners, Staff Directors, and Special Assistants Travel, Fiscal Years 1978 - 1985[a]

	1978		1981	
Commissioners	**Number**	**Amount**	**Number**	**Amount**
Flemming[b]	30	$10,260	25	$8,823
Freeman[c]	20	6,995	•	•
Horn[d]	14	8,575	12	9,597
Pendleton[e]	•	•	•	•
Smith[f]	•	•	•	•
Ruiz[g]	17	8,914	•	•
Saltzman[h]	19	3,988	14	3,175
Berry[i]	•	•	16	6,323
Ramirez[j]	•	•	10	6,237
Ruckelshaus[k]	•	•	8	7,272
Abram[l]	•	•	•	•
Bunzel[m]	•	•	•	•
Guess[n]	•	•	•	•
Buckley[o]	•	•	•	•
Destro[p]	•	•	•	•
Subtotal	**100**	**$38,732**	**85**	**$41,427**
Staff Directors				
Buggs[q]	0	0	•	•
Nunez[r]	13	5,519	13	4,445
Hope (acting)[s]	•	•	1	533
Chavez[t]	•	•	•	•
Green (acting)[u]	•	•	•	•
Subtotal	**13**	**$5,519**	**14**	**$4,978**
Special Assistants				
Novell[v]	•	•	•	•
Wolf[w]	•	•	•	•
Ferrone[x]	•	•	•	•
Arredondo[y]	•	•	•	•
Bryant[z]	•	•	•	•
Bratton[aa]	•	•	•	•
Subtotal	•	•	•	•
Total	**113**	**$44,251**	**99**	**$46,405**

1982		1983		1984		1985		Total	
Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount
9	$2,712	•	•	•	•	•	•	64	$21,795
•	•	•	•	•	•	•	•	20	6,995
6	3,535	•	•	•	•	•	•	32	21,707
20	12,097	31	$20,194	30	$23,200	36	$29,300	117	84,791
9	4,826	12	5,565	1	510	•	•	22	10,901
•	•	•	•	•	•	•	•	17	8,914
12	2,596	13	1,834	1	103	•	•	59	11,696
17	4,714	10	2,772	8	1,492	2	500	53	15,801
9	6,248	10	5,520	7	3,146	3	1,600	39	22,751
6	3,797	5	3,408	0	0	•	•	19	14,477
•	•	•	•	9	1,993	14	3,500	23	5,493
•	•	•	•	8	9,958	11	17,200	19	27,158
•	•	•	•	7	3,623	14	8,000	21	11,623
•	•	•	•	7	4,670	9	6,000	16	10,670
•	•	•	•	7	2,643	4	1,500	11	4,143
88	**$40,525**	**81**	**$39,293**	**85**	**$51,338**	**93**	**$67,600**	**532**	**$278,915**
•	•	•	•	•	•	•	•	0	0
•	•	•	•	•	•	•	•	26	9,964
12	3,200	4	1,628	•	•	•	•	17	5,361
•	•	2	954	21	7,119	15	6,205	38	14,278
•	•	•	•	•	•	0	0	0	0
12	**$3,200**	**6**	**$2,582**	**21**	**$7,119**	**15**	**$6,205**	**81**	**$29,603**
4	$2,239	7	$5,802	12	$8,546	21	$14,800	44	$31,387
•	•	•	•	•	•	1	800	1	800
•	•	•	•	0	0	1	300	1	300
•	•	•	•	0	0	1	400	1	400
•	•	•	•	0	0	1	1,000	1	1,000
•	•	•	•	•	•	1	300	1	300
4	**$2,239**	**7**	**$5,802**	**12**	**$8,546**	**26**	**$17,600**	**49**	**$34,187**
104	**$45,964**	**94**	**$47,677**	**118**	**$67,003**	**134**	**$91,405**	**662**	**$342,705**

[1]Travel vouchers not available for fiscal years 1979 and 1980

[2]Appointment ended April 1982

[3]Appointment ended July 1980

[4]Appointed April 1982

[5]Employed from April 1982 to November 1983

[6]Appointment ended October 1983

[g]Appointed July 1980.

[h]Appointed September 1980.

[i]Appointed July 1980 and served to November 1983.

[j]Appointed December 1983.

[k]Tenure ended February 1978.

[l]Served as Acting Staff Director from February 1978 to March 1979 and Staff Director until July 1981. 1978 does not include 7 trips totaling $2,114 before February 1978.

[m]Served as Acting Staff Director from July 1981 to August 1983.

[n]Employed August 1983 and served to April 1985.

[o]Served as Acting Staff Director from April 1985 to October 1985.

[p]Employed June 1982.

[q]Employed from November 1984 to September 1985.

[r]Employed April 1984.

[s]Employed May 1984.

[t]Employed from May 1984 to September 1985.

[u]Employed October 1984.

Table VIII.2: Office of General Counsel Travel, Fiscal Years 1978 - 1985[a]

			Purpose of trip			
	Total trips		Training, speeches, planning, etc.		Work on mission-related projects	
Fiscal year	Number	Amount	Number	Amount	Number	Amount
1978	95	$66,402	14	$6,278	81	$60,124
1981	43	34,128	3	585	40	33,543
1982	45	39,847	9	4,187	36	35,660
1983	4	1,253	3	1,234	1	19
1984	10	8,977	2	359	8	8,618
1985	6	3,097	3	1,889	3	1,208

[a]Travel vouchers were not available for fiscal years 1979 and 1980.

Appropriations

It was alleged that the Commission may have violated the congressionally imposed earmarks, or line item appropriations, in its fiscal year 1985 appropriation.

Objectives, Scope, and Methodology

We were requested to examine the allocation of overhead costs among the various budget activities specified in the Commission's appropriation and to determine the method of allocation, including whether a standard formula existed, for each budget activity.

We reviewed available financial records to determine how appropriated funds were allocated among the various budget activities for fiscal year 1985. Such financial records were not available for fiscal years 1978 through 1984. However, the Commission's records control schedule required that such records should have been available for fiscal years 1983 and 1984. We also reviewed the Commission's appropriation acts and budget requests covering fiscal years 1978 through 1985.

Background

The Commission's fiscal year 1985 appropriation was the only one during our review period where Congress appropriated funds to the Commission by specific budget activities. These line item appropriations had the effect of establishing separate appropriations for each of the activities. Any obligations exceeding the amount appropriated for any of the seven budget activities would violate the Anti-Deficiency Act.

The Anti-Deficiency Act provides that no officer or employee of the United States shall make or authorize any obligation or expenditure in excess of the amount available in the applicable appropriation (31 U.S.C. §1341(a)(1)(A)). Section 1351 of the act requires that all violations of section 1341(a)(1)(A) be reported by the agency immediately to the President, through the Director of the Office of Management and Budget, and to Congress. The reports are required to contain the facts of the violation and a statement of the disciplinary action taken. If a deficiency appropriation is necessary to liquidate an over-obligation, a request for such an appropriation is part of the report.

Shifting Among Line Item Appropriations

The original fiscal year 1985 appropriation for the Commission totaled $12,747,000. The Commission was successful in securing congressional approval to adjust the amounts appropriated in fiscal year 1985. In August 1985, part of the funding for three budget activities (Publications Preparation and Dissemination, Federal Evaluation, and the

Clearinghouse Library) totaling $421,000 was shifted to the budget activity for Hearings, Legal Analysis, and Legal Services. In addition, an August 1985 supplemental appropriation to cover employee pay raises increased the Commission's total appropriation by $122,000 to $12,869,000. Table IX.1 traces the effects of these changes on each budget activity.

The Commission's seven budget activities in fiscal year 1985 involved nine program offices. The Office of Research and the program functions of the Office of Programs and Policy were funded by the Reports, Studies, and Program Monitoring budget activity. The Office of General Counsel and the Solicitor's Unit were funded by the Hearings, Legal Analysis, and Legal Services budget activity. The Office of Regional Programs, including the 10 regional offices, made up the Field Operations budget activity. The Publications Management Division of the Office of Management was funded by the Publications Preparation and Dissemination budget activity. The Office of Federal Civil Rights Evaluation was funded by the Federal Evaluation budget activity. The Office of Congressional and Public Affairs was funded by the Liaison and Information Dissemination budget activity. The National Clearinghouse Library was funded by the Clearinghouse Library budget activity.

Other units of the Commission were included in overhead costs that were allocated to the seven budget activities on the basis of salary costs[1] incurred by the offices covered by each activity. These units included the Commissioners, the policy functions of the Office of Programs and Policy, the Office of Management, the Offices of the Staff Director and Deputy Staff Director, the Equal Employment Opportunity Unit, and the Planning and Coordination Unit.

The Commission's determination of program costs and overhead allocated to the seven budget activities for fiscal year 1985 are shown in table IX.2.

Third Hearing in Fiscal Year 1985

In its narrative justification for shifting $421,000 to the Hearings, Legal Analysis, and Legal Services budget activity, the Commission made the following statement during hearings before a House Appropriations Subcommittee in March 1985:

[1]This includes the salaries of full-time permanent employees and other staff, such as temporary and part-time employees and consultants. It does not include overtime and awards.

"The Commission proposes to hold a hearing, a combination hearing/consultation and to begin field work for a third hearing this fiscal year. This compares to earlier plans to hold two hearings."

In responding to a question raised during the hearings by the Subcommittee Chairman, the Commission's Staff Director said that the Commission planned to actually conduct three hearings in fiscal year 1985 in contrast to the above statement, indicating that only field work would be started on the third hearing during the year.

In recommending approval of the change in the budget activities, the House Appropriations Committee's report on the 1985 supplemental appropriations bill (99-142) stated that "The proposed language changes will enable the Commission to adopt its program to include a third hearing for fiscal year 1985 beyond the two hearings provided for by the fiscal year 1985 Appropriations Act."

Only two hearings were held during fiscal year 1985. They included a consultation/hearing on affirmative action in March 1985 and a hearing on handicapped newborn infants in June 1985. The third, a consultation/hearing on housing discrimination, was not held until November 1985. Therefore, we requested a breakdown from the Commission showing how the $421,000 transferred into the Hearings, Legal Analysis, and Legal Services budget activity had been spent.

The Commission's Assistant Staff Director for Administration and the Budget Officer provided us with an explanation of how the $421,000 was spent. They said that $83,000 was charged to salaries and benefits of General Counsel staff who worked on preparing for the housing discrimination consultation/hearing and an additional $226,000 was spent elsewhere within the hearings budget activity. According to the Commission officials, $51,000 of the $226,000 was for overhead attributable to the budget activity, and $175,000 was spent on various other unidentifiable, program activities. The Commission officials told us the remaining $112,000, the difference between the hearings budget activity's line item appropriation and the final obligation amount, was returned to the Treasury.

The $83,000 charged to the housing consultation/hearing project in fiscal year 1985 was derived as follows. The original charges to the housing project based on the monthly time charge reports prepared by the General Counsel staff involved were 313.5 staff days with a total cost of

$47,500. In January 1986, the Assistant Staff Director for Administration requested the General Counsel to review the time charges for the project to determine if they were understated. After his review, the General Counsel reported that he found some inaccuracies in the amount of time allocated to the project. On February 11, 1986, he increased the time charges for himself, his deputy, and seven other employees by 153.5 days so that the total time charged equalled 467 days costing $83,000. Four of these employees, including the General Counsel, had not initially charged any time to the project.

According to the General Counsel, his revisions were based on discussions with the five staff members who worked on the project and were still employed by the Commission and his knowledge of what the three staff members who had left the Commission were working on at the time. We interviewed the five General Counsel staff whose time charges were revised by the General Counsel and who were still employed by the Commission. One of these was the Deputy General Counsel. He said the changes to his time charges were appropriate. Only one of the four others agreed that the changes made were appropriate. Another said he had been told by the General Counsel that time charges were being changed, but he did not agree with the changes that were made to his time charges. The two others said that the General Counsel had not discussed the changes to their time charges with them and that the changes were not correct.

The project account code for the housing project that was the basis for time charges was assigned on July 22, 1985. On the original time charges for the project, there were no charges before July. According to the General Counsel, work was performed on the project before the approval of the project account code, but time was not charged to the project because no code existed. His revisions showed a total of 75.5 days for seven employees charged to the project from February to June 1985. According to the project director, he delayed requesting a project code until final decisions were made by the Staff Director on topics for the hearing and the project's staffing. He requested a project account code on July 19, 1985. The project director told us that 75.5 staff days for seven staff from February to June 1985 appeared high and that he was unaware of that many people working on the project at that time. He acknowledged that some staff work was performed before July, but said only one staff member did substantial work.

Revised time charges for the General Counsel and the Deputy General Counsel accounted for about two-thirds of the 153.5 additional days

charged to the housing project. These two individuals originally had no time charges to the project. According to the General Counsel, who was appointed to his position in May 1985, he was not aware that monthly time account reports were required until he was requested to review the time charges by the Assistant Staff Director for Administration in January 1986. He said that both he and his deputy had not been asked what projects they spent their time on by the General Counsel employee who initially prepared the reports.

Year-End Reconciliation

We attempted to determine whether the Commission's allocation of costs during the year-end closing was consistent with the treatment of such costs at the time the budget was submitted to Congress. However, we found that data on how the fiscal year 1985 budget was constructed were practically nonexistent.

The Commission changed the method of allocating printing costs during fiscal year 1985. At the year-end closing the Commission treated printing costs ($240,000) as an overhead item to be allocated to the seven budget activities. However, a Commission summary of agency expenditures for the first month of fiscal year 1985 estimated printing cost as a direct charge to the Publications Management Division, the only program office included in the Publications Preparation and Dissemination budget activity. Also, the Commission's justification for transferring $84,000 from the Publications Preparation and Dissemination budget activity to Hearings, Legal Analysis, and Legal Services when the amounts appropriated for the various budget activities were revised suggests that the Commission had originally anticipated that printing costs would be covered by the Publications Preparation and Dissemination budget activity. The justification, which was forwarded to the Director of the Office of Management and Budget on November 7, 1984, was as follows:

"Because of the restructuring of the Commission in November 1983, most of the projects presently underway were started in the latter part of fiscal year 1984. This will result in fewer reports reaching the editing and printing stage in fiscal year 1985. The savings from not filling one position and from lower printing costs would be transferred to Activity II [Hearings, Legal Analysis, and Legal Services]." (Underlining added for emphasis.)

A similar statement was placed in the record during hearings before the Appropriations Subcommittee on March 7, 1985.

If printing costs had been treated as a direct charge to Publications Preparation and Dissemination during the calculation of final obligations, the total charges to this activity would have been about $976,000, or about $223,000 over the $753,000 appropriated for this activity.

The Budget appendix for fiscal year 1985, which contained the agency's description of the work it intended to perform, suggests that printing costs may not have been considered as a direct charge. The appendix contains the following explanation of the work to be done in the Publications Preparation and Dissemination activity: "Commission publications are edited, illustrated, processed, and prepared for printing. Publications are distributed to those who implement the laws and policies, as well as to the general public" (emphasis added). The use of the phrase "prepared for printing" rather than "printing costs" casts some doubt on whether the Commission intended to treat all printing costs as a direct charge to the Publications activity. We noted that the Commission's Budget appendixes for fiscal years 1984 and 1986 each contained the same description of the Publications Preparation and Dissemination budget activity as quoted above.

We discussed the printing cost issue with the Commission's Budget Officer and her staff. She was not employed at the Commission at the time the fiscal year 1985 budget was constructed. A staff member who worked on the budget submission said printing costs were included as a direct charge to the Publications budget activity. However, the Budget Officer informed us that the issue had been discussed among Commission officials in June 1985 and that they had decided that the cost of printing should be included in overhead because (1) the printing function served the entire organization, (2) the cost of printing had been included in overhead previously, and (3) treatment of printing as overhead would permit the Commission to stay within its line item appropriations.

The Anti-Deficiency Act does not require an agency to follow its original budget estimates unless these estimates are specified in or incorporated by references in the appropriation act itself. The appropriation act did not specify where printing costs were to be charged. Thus, the Commission was under no legal obligation to follow its original budget submission. Furthermore, it is not clear whether Congress intended to include printing costs in the Publications Preparation and Dissemination budget activity. The line items do not describe the activities included under the heading "Publications Preparation and Dissemination." Although more than one of the budget activities specified may reasonably be construed

as available for an expenditure not specifically mentioned under any of the activities, the determination of the agency as to which of the activities to use is presumed to be reasonable as long as the agency is consistent in charging that activity. In this instance, a reasonable basis exists for treating printing costs, which serve the needs of the entire organization, as part of overhead and for allocating the overhead costs among the seven budget activities. Therefore, we cannot conclude that any violation of the Anti-Deficiency Act occurred.

Commission Obligations by Budget Activities, Fiscal Years 1978 to 1985

Records were not available to show how appropriated funds were allocated among the various budget activities before 1985. However, information on Commission obligations by budget activity was available for the full period of our review and is presented in table IX.3.

Table IX.1: The Commission's Fiscal Year 1985 Appropriation

Budget activity	Program costs	Overhead	Total obligations
Reports, Studies, and Program Monitoring	$2,299,000	$2,299,000	$2,320,000
Hearings, Legal Analysis, and Legal Services	1,642,000	2,063,000	2,083,000
Field Operations	4,999,000	4,999,000	5,047,000
Publications Preparation and Dissemination	831,000	747,000	753,000
Federal Evaluation	1,217,000	1,011,000	1,022,000
Liaison and Information Dissemination	1,231,000	1,231,000	1,244,000
Clearinghouse Library	528,000	397,000	400,000
Total	**$12,747,000**	**$12,747,000**	**$12,869,000**

Table IX.2: Program Costs and Overhead Allocated to Budget Activities, Fiscal Year 1985

Budget activity	Program costs	Overhead	Total obligations
Reports, Studies, and Program Monitoring	$1,354,000	$878,000	$2,232,000
Hearings, Legal Analysis, and Legal Services	1,146,000	825,000	1,971,000
Field Operations	3,013,000	2,034,000	5,047,000
Publications Preparation and Dissemination	467,000	282,000	749,000
Federal Evaluation	563,000	430,000	993,000
Liaison and Information Dissemination	717,000	497,000	1,214,000
Clearinghouse Library	259,000	141,000	400,000
Total	**$7,519,000**	**$5,087,000**	**$12,606,000**

Table IX.3: Commission Obligations by Budget Activities, Fiscal Years 1978-1985

Dollars in thousands

Budget Activity	1978	1979	1980	1981	1982	1983	1984	1985
Reports, Studies, and Program Monitoring	$1,547	$1,939	$1,996	$2,050	$2,175	$2,121	$2,367	$2,232
Hearings, Legal Analysis, and Legal Services	1,355	1,466	1,578	1,681	1,769	1,442	1,516	1,971
Field Operations	3,546	3,967	4,384	4,453	4,806	4,657	4,926	5,047
Publications Preparation and Dissemination	1,307	1,078	1,037	1,044	786	773	666	749
Federal Evaluation	632	849	867	1,001	954	1,117	920	993
Liaison and Information Dissemination[1]	•	1,198	1,373	1,261	1,280	1,199	1,181	1,214
Clearinghouse Library[2]	770	352	455	457	460	494	394	400
National Issues	828	•	•	•	•	•	•	•
Special Age Discrimination Project[3]	402	•	•	•	•	•	•	•
Total	**$10,387**	**$10,849**	**$11,690**	**$11,947**	**$12,230**	**$11,803**	**$11,970**	**$12,606**
Unobligated Balance Lapsing	**459**	**3**	**29**	**206**	**88**	**173**	**40**	**263**
Budget Authority	**$10,846**	**$10,852**	**$11,719**	**$12,153**	**$12,318**	**$11,976**	**$12,010**	**$12,869**

[1] The Office of Congressional and Public Liaison was created in fiscal year 1978 and comprises the Liaison and Information Dissemination budget activity. The new office was created from the Congressional Liaison Unit, the Public Affairs Unit, and the Women's Rights Program Unit within the Staff Directors Office, and the Special Projects Division of the Office of National Civil Rights Issues.

[2] The Office of Research was established in fiscal year 1978 and most of its research functions transferred to the Office of Program and Policy Review, the Reports, Studies, and Program Monitoring budget activity. The Library, part of the Office of Research, was retained as a separate budget activity.

[3] The Office of National Civil Rights Issues was established in fiscal year 1978 and most of its research functions transferred to the Office of Program and Policy Review, the Reports, Studies, and Program Monitoring budget activity.

[4] Special project mandated by Title II, section 204 of Public Law 94-135, completed in fiscal year 1978.

Lobbying

Concern was expressed that the current Chairman may have violated federal antilobbying restrictions.

Objectives, Scope, and Methodology

We were asked to review letters sent by the current Chairman to four Members of Congress and to determine whether the Chairman's actions violated any federal antilobbying restrictions and whether the Commission had, in fact, taken the position cited by the Chairman in the letters. We were also asked to examine written speeches given by the Commissioners.

We reviewed various laws pertaining to lobbying by federal employees. We also reviewed (1) the letters, provided by the House chairpersons, that the Chairman sent to four Members of Congress and related Commission policy statements; (2) two Commission reports before fiscal year 1983 dealing with the proposed Equal Rights Amendment to determine whether they might have violated antilobbying statutes; and (3) written speeches by the Commissioners. Copies of speeches reviewed were those available at the Commission. Although the Commission's records control schedule requires copies of speeches to be transferred to a federal records center 2 years after a change in Administration, no written speeches were available at the two federal centers we visited in Seattle, Washington, and Suitland, Maryland.

Background

Restrictions on lobbying by government officials to support or oppose pending legislation are of two types: restrictions in specific appropriations acts and criminal code provisions. Many annual appropriations acts contain restrictions on the use of federal funds for lobbying activities. The Commission's fiscal year 1985 appropriations act did not contain such a restriction, but even if the restriction had been included, we do not believe it would have prohibited the Chairman from writing letters to Members of Congress in an attempt to directly influence pending legislation. In interpreting such restrictions, we recognized that every federal agency has a legitimate interest in communicating with the public and Congress regarding its policies and activities. We also reviewed the writing of these letters in light of the criminal provisions in 18 U.S.C. §1913, Lobbying With Appropriated Moneys, and found no conflict with those provisions.

The statute reads as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than one year, or both, and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

The above statute contains fine and imprisonment provisions, and its enforcement is the responsibility of the Department of Justice. To our knowledge, there has never been a prosecution under this statute.

Chairman's Letters to Members of Congress

On July 29, 1985, the Commission's Chairman sent letters to four Members of Congress in which he expressed his views on an amendment to H.R. 2068, the Foreign Relations Authorization Act, for fiscal years 1986 and 1987. According to the Chairman, the amendment would have required the imposition of racial, sexual, and ethnic quotas in the State Department's hiring of Foreign Service officers. He said that the amendment violated the policy of the Civil Rights Commission, as expressed in a policy statement adopted in January 1984.

The Chairman interpreted the amendment as calling for quotas. The Commission adopted a policy statement against quotas in January 1984 by a 6 to 2 vote.

With respect to the lobbying issue, because the Chairman's letter reflected an official position of the Commission on quotas, we concluded that the Chairman of the Commission did not violate antilobbying statutes by expressing his views on the bill amendment to Members of Congress.

Speeches

Copies of speeches by the Commissioners for both the earlier years (fiscal years 1978 through 1982) and the later years (fiscal years 1983

through 1985) were generally not available. However, the Commission provided listings of 20 speeches for the earlier years and 302 for the later years. There were 16 and 43 copies of speeches provided to us for the earlier and later years, respectively. The current Chairman made 270 of the speeches, 55 of which were provided to us.

Our review of the limited records that were available for the earlier years disclosed no apparent violations of the antilobbying restrictions. However, we found that Chairman Pendleton, in 10 speeches to various audiences during March to July 1985, made the following statement, which appeared to represent the type of remarks the restrictions on lobbying by government officials attempt to limit:

"I FEEL COMPELLED AT THIS POINT TO APPEAL TO EACH OF YOU TO ATTEMPT TO DEFEAT THE CIVIL RIGHTS RESTORATION ACT OF 1985. IT IS PROBABLY THE BROADEST INTERPRETATION OF THE CIVIL RIGHTS ACT OF 1964 EVER IMAGINED. THE BILLS BOTH H.R. 700 AND S. 272 WOULD RESULT IN A MASSIVE FEDERAL INTRUSION INTO BOTH STATE AND LOCAL GOVERNMENT AND THE PRIVATE SECTOR BY EXPANDING THE DEFINITION OF PROGRAM OR ACTIVITY COVERED BY FEDERAL AID AND BY EXPANDING THE AUTHORITY OF A FEDERAL AGENCY TO TERMINATE FEDERAL FUNDS. THE OPEN ENDED NATURE OF THE LEGISLATION AMOUNTS TO AN OPEN INVITATION TO THE FEDERAL GOVERNMENT TO EXTEND ITS REACH VIRTUALLY WITHOUT LIMIT THROUGHOUT AMERICAN SOCIETY AND FOR FEDERAL REGULATORS, PRIVATE LITIGANTS, AND FEDERAL JUDGES TO WORK THEIR WILL IN PLACES THEY HAVE NEVER BEEN BEFORE."

The statement raises a matter of concern under 18 U.S.C. §1913, Lobbying With Appropriated Moneys. While the Chairman did not explicitly request members of the public to contact their elected representatives, the context of the speech makes it clear that the listener is being urged to do so.

Equal Rights Amendment Studies

On April 22, 1986, in response to our March 25, 1986, testimony before the House Subcommittee on Civil and Constitutional Rights, the Staff Director questioned whether the Commission's 1982 release of an official statement urging passage of the Equal Rights Amendment may have violated federal antilobbying statutes. The Commission could not provide a copy of any such statement. However, the Commission's Assistant Staff Director for Administration provided us copies of two Commission reports, dated December 1978 and June 1981, on which he told us the Staff Director based his remarks. Both reports urged state legislatures to ratify the Equal Rights Amendment.

Various appropriations acts have, since the early 1950s, contained general provisions prohibiting the use of appropriated funds for "publicity or propaganda." A provision in effect at the time both reports were published contained a prohibition applicable to the Commission on Civil Rights and other agencies stating:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda designed to support or defeat legislation pending before Congress." (Emphasis supplied.)[1]

We do not believe this provision would apply to expenditures made by the Commission to fund a study that urges ratification by state legislatures of the Equal Rights Amendment. Once Congress sent the Equal Rights Amendment to the states for approval, it was no longer "pending before Congress." Therefore, in our opinion, urging states to ratify the Equal Rights Amendment did not violate this "publicity and propaganda" statute.

The statute dealing with lobbying with appropriated funds (18 U.S.C. §1913), which was our concern in relation to the Chairman's speeches, does not extend to attempts to influence state legislatures. This law refers to the influencing of a Member of Congress and is thus not applicable to the situation in question.

[1]Section 607(a), Treasury, Postal Service, and General Government Appropriations Act, 1979 (P.L. 95-429, Oct. 10, 1978); Section 608(a) of H.R. 7583, Treasury, Postal Service, and General Government Appropriations, 1981. This limitation was imposed by Section 101(a) of Further Continuing Appropriations for fiscal year 1981, December 16, 1980 (P.L. 96-536).

State Advisory Committees

It was alleged that (1) the Commission headquarters staff was excessively involved in the 1985 state advisory committee rechartering process, particularly the nomination of committee members and chairs; (2) the committees did not meet the membership criteria cited in Commission regulations; (3) the committees were not seeking input from regional offices as they had done in the past; and (4) few committee reports were issued and many reports were held up in the Staff Director's office.

Objectives, Scope, and Methodology

We were requested to (1) examine the rechartering of the committees in 1985 and determine whether they met the standards of diverse membership set forth in Commission regulations; (2) determine whether the role of the committees, including regional office assistance provided to them, had changed before and after the 1985 rechartering; and (3) determine the extent to which committee reports were printed and released to the public.

We reviewed the Federal Advisory Committee Act (Public Law 92-463) and the Commission's regulations pertaining to their state advisory committees (45 C.F.R. 703). We also reviewed the characteristics of committee chairpersons and members compiled by the Commission. Office of Regional Programs and regional office staff who serve as liaisons with the committees were interviewed to (1) determine the committee rechartering process, (2) obtain their views as to whether the standards of diverse membership were met as set forth in the act and regulations, and (3) determine their relationships with the committees. We judgmentally selected 12 regional officials in 4 of the 10 Commission regional offices to interview. We did not interview state advisory committee members. To determine whether the roles of the committees had changed, we also obtained data on the different types of committee meetings during fiscal years 1978 to 1985. We previously reported[1] the numbers and titles of committee reports printed and released during fiscal years 1978 to 1985.

Background

The state advisory committees, composed of unpaid members, and Commission regional staff are the "eyes and ears" of the Commission in each of the states and the District of Columbia. According to Commission regulations, the committees advise the Commission on matters relating to

[1]U.S. Commission on Civil Rights: Commission Publications During Fiscal Years 1978-1986 (GAO/GGD-87-117BR, Sept. 1987).

alleged deprivation of the right to vote or the denial of equal protection of the laws under the Constitution; advise the Commission on matters of mutual concern; receive input from those within the state regarding inquiries conducted by the committees; initiate and forward advice and recommendations to the Commission on those matters they have studied; and assist the Commission with its clearinghouse function of compiling and distributing information to interested persons in several areas, such as minorities' and women's civil rights, the aged, and the handicapped. Generally, each committee is limited to matters within its state. The Commission's regional offices provide support services to the committees in addition to performing other regional functions of the Commission.

Committee Rechartering and Diversity of Membership

Commission regulations and the Federal Advisory Committee Act provide general guidance on the makeup of the state advisory committees. The act stipulates that committee membership for all federal advisory committees should be fairly balanced in terms of the points of views represented and the functions to be performed. The Commission regulations also require committee membership to be reflective of the ethnic, racial, and religious composition of each state as well as representative with respect to sex, political affiliation, age, and handicap status. In accordance with the act, advisory committees are generally chartered (established) for a specified period and must be rechartered to carry on their duties. The Commission's 1985 rechartering occurred between January and May 1985, and its most recent previous rechartering occurred between December 1981 and December 1983.

Commission regulations state that each state advisory committee shall consist of at least 11 members; however, exceptions may be made by the Commissioners in special circumstances. Before the 1985 rechartering, the size of the committees varied, ranging from 11 to 33 members. The recommended committee size in the past, per Commission guidelines, was 11 members plus 1 additional member for each million of population in a state. Thus, states such as Rhode Island and Delaware had the minimum number of members, and New York and California had the largest numbers. In March 1984, the Commissioners approved the Staff Director's recommendation that committee membership in each state be set at 11. According to the Staff Director, there appeared to be no strong justification to tie the size of the committees to population, and larger sizes were too costly. She also noted that existing guidelines relating to diversity of membership could be met with the 11-member limitation.

In the previous rechartering of the state advisory committees that occurred between December 1981 and December 1983, the Commissioners selected the majority of committee members and chairpersons on the basis of recommendations from the Commission's regional offices. According to the Assistant Staff Director for Regional Programs, recommendations were made by regional directors, committee chairpersons, and individual Commissioners, but the majority came from regional directors. Similarly, for the 1985 rechartering, the regions recommended 561 committee members to headquarters; however, headquarters' officials recommended 280 other individuals as substitutes for 280 of the regional nominees, including 47 substitutes for the 51 chairpersons recommended by the regions. The Commissioners selected 550 nominees: 270 recommended by the regions and 280 by headquarters. Nominees for the Washington, D.C., advisory committee were not forwarded to the Commissioners with the other nominees, and the committee was not rechartered until March 1987.

We discussed the 1985 rechartering with 12 regional office officials. They said the membership and balanced point of view criteria were met by the committees before the 1985 rechartering. The officials were equally divided on whether the committees met the various population membership criteria after the 1985 rechartering, but seven thought the new committees did not meet the balanced point of view criteria. The current Commission Chairman has said that the committees are balanced in terms of points of views represented.

In commenting on a draft of this report, the Commission Chairman stated that attendance problems among the state advisory committee members and possible agency noncompliance with requirements for "divergent points of view" among advisory committee members were basic reasons for greater headquarters' involvement in the 1985 recharters. However, in its 1983 and 1984 annual reports to the General Services Administration's Committee Management Secretariat, which is responsible for overseeing federal advisory committee activities, the Commission reported that the committees met the balanced points of view requirements.

Table XI.1 shows the characteristics of committee membership during fiscal years 1979, 1981, 1982, and 1985. Among the changes in 1985 were an increase in white membership from 45.8 percent to 58.9 percent and a decrease in female membership from 47.2 percent to 35.3 percent. Comparing the 1980, 1982, and 1985 chairpersons (see table XI.2), blacks were down 24 percentage points in 1985; whites were up 30

points; Jews were up 36 points; Protestants were down 28 points; females were down 33 points; and Republicans were up 18 points.

Regional Office Assistance and Role of the Advisory Committees

Administrative assistance to the committees by the regional offices has not changed with the 1985 rechartering, according to those 12 regional officials we interviewed. However, nine regional officials said that the nature of their involvement with the committees had changed. A tenth official said she had no basis for commenting. The nine officials indicated that the rechartered committees obtained less input from regional office staff in identifying issues. They said that they could not express views to the committees as they had in the past; one of the nine said that he had to get headquarters' approval before presenting ideas to the committees. Another of the nine said that he was directed by headquarters not to suggest projects or issues. Before the 1985 rechartering, according to the nine regional officials, regional staff exercised more control over the committees in project identification.

As shown in table XI.3, the number of state advisory committee meetings was at the highest levels in fiscal years 1979 and 1980 and at the lowest in fiscal year 1984. There are four types of advisory committee meetings: planning, special, factfinding, and conference. Planning meetings are to plan programs, discuss projects, establish priorities, gather factual data, and review reports before sending them to the Commission. Special meetings, which are not formal meetings, involve investigative interviews, procedural planning, and follow-up activities at which no decisions are reached. Factfinding meetings are held to obtain information from government officials and private citizens on topics being studied by the committee. These meetings differ from a Commission hearing primarily because the committees do not have subpoena power and cannot take testimony from witnesses under oath. Finally, conferences are meetings whereby the committees exchange information with experts on specific topics.

Advisory Committee Reports

The state advisory committees' primary method of providing advice to the Commission until fiscal year 1985 was reports. In fiscal year 1985, the committees began using briefing memoranda as another way to advise the Commission. Briefing memoranda are informal, unpublished, internal documents that describe for the Commissioners the result of local community forums. According to a Commission official, the briefing memoranda concept grew out of a perceived need by the Staff Director and regional directors for an alternative to the formal committee

reports. Briefing memoranda are submitted to the Commissioners, through the Staff Director's office, for informational purposes only. In a few instances, according to the Assistant Staff Director for Regional Programs, the briefing memoranda were also provided to regional directors. In fiscal year 1985, 24 briefing memoranda were submitted to the Commissioners.

Table XI.4 shows that the number of published committee reports was at the highest level in fiscal year 1982 and at the lowest level in fiscal year 1985. Each of two advisory committees released a report in fiscal year 1985 but the two reports were not published as Commission documents. The two advisory committees were given permission by the Commissioners to release the reports within their states.

Table XI.1: Characteristics of State Advisory Committees, Fiscal Years 1979, 1981, 1982, and 1985[a]

Fiscal years in percent				
Race	**1979[b]**	**1981[c]**	**1982[d]**	**1985[e]**
American Indian	8 7	8 1	6 9	4 4
Asian American	3 7	3 5	3 4	2 7
Black	28 6	28 6	28 3	25 1
Hispanic	12 0	10 6	11 7	8 5
White	45 8	48 2	49 0	58 9
Other	1 2	1 0	0 7	0 4
Total	**100.0**	**100.0**	**100.0**	**100.0**
Religion				
Catholic	26 0	21 5	23 2	22 5
Jewish	9 6	10 3	11 0	20 9
Protestant	40 7	54 9	52 2	45 7
Other	23 7	13 3	13 6	10 9
Total	**100.0**	**100.0**	**100.0**	**100.0**
Sex				
Female	47 2	45 6	45 6	35 3
Male	52 8	54 4	54 4	64 7
Total	**100.0**	**100.0**	**100.0**	**100.0**
Political affiliation				
Democrat	41 4	41 6	43 5	45 7
Republican	31 4	35 8	36 5	35 2
Independent[f]	27 2	22 6	20 0	19 1
Total	**100.0**	**100.0**	**100.0**	**100.0**
Age				
Under 40	33 9	28 0	25 9	21 3
Over 40	66 1	72 0	74 1	78 7
Total	**100.0**	**100.0**	**100.0**	**100.0**

[a]Data available for only 2 states in fiscal year 1978 and 10 states in fiscal year 1980 and thus are excluded.

[b]Thirty seven states and the District of Columbia were rechartered in fiscal year 1979; religious data reported for only 7 states.

[c]Thirty one states and the District of Columbia were rechartered in fiscal year 1981.

[d]Rechartering of all 51 state advisory committees occurred between December 1981 and December 1983.

[e]All state advisory committees rechartered except the Washington, D.C., committee.

[f]Includes no known political affiliation.

Table XI.2: Characteristics of State Advisory Committee Chairpersons

Fiscal years in percent			
Race	**1980[a]**	**1982[b]**	**1985[c]**
American Indian	2.0	3.9	4.0
Asian American	2.0	11.8	0.0
Black	42.0	41.2	18.0
Hispanic	10.0	13.7	6.0
White	42.0	29.4	72.0
Other	2.0	0.0	0.0
Total	**100.0**	**100.0**	**100.0**
Religion			
Catholic	18.0	13.7	14.0
Jewish	12.0	11.8	48.0
Protestant	58.0	62.7	30.0
Other	12.0	11.8	8.0
Total	**100.0**	**100.0**	**100.0**
Sex			
Female	41.2	39.2	8.0
Male	58.8	60.8	92.0
Total	**100.0**	**100.0**	**100.0**
Political affiliation			
Democrat	66.0	52.9	40.0
Republican	26.0	25.5	44.0
Independent[d]	8.0	21.6	16.0
Total	**100.0**	**100.0**	**100.0**
Age			
Under 40	16.0	25.5	24.0
Over 40	84.0	74.5	76.0
Total	**100.0**	**100.0**	**100.0**

[a]Does not include race, religion, or political affiliation of Alaska chairperson in calendar year 1980. The Commission data were available for calendar year 1980 but not for fiscal years 1979, 1980, and 1981.

[b]Includes all 51 state advisory committee chairpersons between December 1981 and December 1983.

[c]Does not include Washington, D.C., chairperson.

[d]Includes no known political affiliation.

Table XI.3: State Advisory Committee Meetings, Fiscal Years 1978-1985

Type of meetings	1978	1979	1980	1981	1982	1983	1984	1985
Planning	186	227	196	178	171	170	170	235
Special	74	135	165	107	95	69	40	54
Factfinding	21	25	28	14	18	12	3	0
Conference	24	19	13	15	14	10	9	5
Total	**305**	**406**	**402**	**314**	**298**	**261**	**222**	**294**

Table XI.4: State Advisory Committee Reports, Fiscal Years 1978-1985

Fiscal year	Number of reports
1978	18
1979	14
1980	20
1981	32
1982	40
1983	34
1984	5
1985	0

Commission Automobile

It was alleged that a Commission automobile was used for other than official purposes, such as transporting the Staff Director between home and work.

Objectives, Scope, and Methodology

We were requested to determine whether the automobile's use was consistent with regulations governing official vehicle use.[1]

We attempted to obtain trip logs covering fiscal years 1978 to 1985 to assist in determining whether the Commission's headquarters automobiles were used for official purposes. Trip logs, which show the mileage and points of departure and arrival for each trip, were not available before January 3, 1983, nor for July 1, 1983, through April 23, 1985. We interviewed two Commission employees, one present and one former, who were drivers covering the period July 1, 1983, through April 23, 1985, for which trip logs were not available. A Commission administrative instruction required that completed logs were to be sent to the Commission's Administrative Services Division of the Office of Management at the end of each calendar year. However, the Commission's records control schedule did not require retention of the trip logs.

Warehouse and Staff Director Automobiles

During the period of our review, an automobile was assigned to the Commission warehouse in Alexandria, Virginia, to transport publications and other materials to the Commission and other locations in the Washington, D.C., metropolitan area. Certain employees who worked primarily at the warehouse were designated to drive the automobile. While the automobile was assigned to the warehouse, trip logs were available for January 3 through June 30, 1983, and April 24 through October 7, 1985. On the basis of the logs and discussions with a driver, it appeared that the automobile was used for official purposes. From late January through late April 1985, this automobile was reassigned to the Staff Director's office. Warehouse employees did not drive the automobile during this later period. Instead on January 28, 1985, a new driver was hired by the Commission and reported to the Staff Director's office.

Also, for 5 months in 1979 and 1980, an automobile was assigned to the Staff Director's office. The automobile was discontinued, according to a

[1]Although the basic authority for the use of government motor vehicles (31 U.S.C. §1344) does not define official purpose, it does state an official purpose does not include transporting officers or employees of the government, with certain exceptions, between their domiciles and places of employment. The exceptions do not apply to the Commission.

Commission employee, because of work-related problems with the driver.

Trip logs were not available for the 5 months in 1979 and 1980 and 3 months in 1985 when an automobile was assigned to the Staff Director's office. However, the driver of the automobile stationed at the warehouse from July 1, 1983, through late January 1985, and the former driver of the same automobile assigned to the Staff Director's office for the 3-month period ending April 23, 1985, told us that the automobile was used for official purposes.

Additionally, the Assistant Staff Director for Administration asked both the former driver and the former Staff Director for statements explaining how the automobile was used while it was assigned to the Staff Director's office for the 3-month period ending in April 1985. While they stated in writing that the former driver drove the former Staff Director and Commissioners to meetings and other official functions, they did not state specifically that the automobile was used only for official functions.

Contracting

It was alleged that contractors were used to perform work that should have been done by the Commission's career staff.

Objectives, Scope, and Methodology

We were requested to examine the extent of work contracted by the Commission, including whether the contracts were subject to competitive bidding.

We reviewed contracts maintained by the Commission's Office of Management and by the Solicitor, who is also the Commission's contracting officer, to determine the number of mission-related contracts and the amounts of award and obligations. Because of the number of contracts that we would have had to review and the desire to compare the same number of years in the earlier and later years at the Commission, we judgmentally selected fiscal years 1978 and 1979 from the earlier years and fiscal years 1984 and 1985 from the later years. We looked at available contract files for 11 of the 12 contracts that met the criteria for being subject to competitive award.

Mission-Related Contracts

For purposes of our review, we divided the contracts into the following three mission-related categories:

- direct mission work, such as purchase orders for the preparation of papers for hearings,
- mission support work, such as room rentals and court reporters for Commission meetings, and
- miscellaneous, such as subscriptions to civil rights related journals.

Contracts not directly related to the mission of the agency, such as typewriter repair and supplies, were excluded from our review.

Tables XIII.1 through XIII.4 show the number and dollar amounts of mission-related contracts by program office and category for fiscal years 1978, 1979, 1984, and 1985. Comparing the two periods, fiscal years 1978 and 1979 had the larger number of contracts (844 compared to 622). Fiscal years 1984 and 1985 had the larger dollar amount of contracts ($929,754 compared to $711,057), and contracts represented a slightly larger percentage of total obligations (3.7 percent compared to 3.3 percent).

We found the mission-related contracts for both periods were for similar-type work. According to the Assistant Staff Directors for Administration who served in each of the periods, the mission-related contracts were used to supplement Commission capability or obtain capability that did not exist in the Commission.

In fiscal years 1978 and 1979, federal acquisition regulations generally required that those contracts exceeding $10,000 be competitively bid. During fiscal year 1984, the amount was increased to $25,000. We found 10 contracts exceeding the $10,000 amount were awarded in fiscal years 1978 and 1979, and 2 contracts exceeding the $25,000 amount were awarded in fiscal years 1984 and 1985. The 10 contracts in fiscal years 1978 and 1979 totaled $365,664 and the 2 contracts in fiscal years 1984 and 1985 totaled $497,644. The largest initial contract amount awarded in fiscal years 1978 and 1979 was $74,105; the largest in fiscal years 1984 and 1985 was $444,364.

We reviewed the available contract files for 11 of the 12 contracts to see if they were competitively bid or negotiated and, if negotiated, whether the decision to award them by negotiation was proper. One contract file from fiscal year 1978 was not available. Because of insufficient information, we could not determine if eight of the remaining nine contracts awarded in fiscal years 1978 and 1979 were awarded competitively. The ninth was negotiated as a noncompetitive contract. On the basis of available documentation, we could not determine whether this contract met the criteria for a noncompetitive award.

One of the two contracts in fiscal years 1984 and 1985 was awarded noncompetitively for $53,280. Federal regulations allow noncompetitive awards when certain conditions are met, but the contract file did not document the existence of those conditions. The Commission's Solicitor told us these conditions were met. The other contract was awarded competitively for $444,364.

Table XIII.1: Mission-Related Contract Obligations, Fiscal Year 1978

	Direct Mission		Mission Support		Miscellaneous		Total	
Headquarters' offices	**Amount**	**Number**	**Amount**	**Number**	**Amount**	**Number**	**Amount**	**Number**
Federal Civil Rights Evaluation	$175	1	0	0	$190	1	$365	2
General Counsel	0	0	0	0	0	0	0	0
Management	11,357	12	$46,613	44	8,331	18	66,301	74
National Civil Rights Issues	10,046	31	802	2	340	1	11,188	34
Program and Policy Review	1,675	4	0	0	220	3	2,095	7
Research	470	6	0	0	3,332	1	3,802	7
Staff Director	33,344	10	30	1	1,648	10	35,022	21
Subtotals	**$57,267**	**64**	**$47,445**	**47**	**$14,061**	**34**	**$118,773**	**145**
Regions								
Central States	0	0	1,206	15	2,326	20	3,532	35
Mid Atlantic	500	1	1,113	8	2,336	22	3,949	31
Midwestern	400	1	1,410	20	1,752	20	3,562	41
Northeastern	0	0	1,682	25	1,237	3	2,919	28
Northwestern	0	0	1,508	9	1,734	9	3,242	18
Rocky Mountain	0	0	1,677	7	1,489	26	3,166	33
Southern	0	0	377	7	375	10	752	17
Southwestern	2,099	2	1,058	13	895	2	4,052	17
Western	31,582	2	3,973	18	1,184	7	36,739	27
Subtotals	**$34,581**	**6**	**$14,004**	**122**	**$13,328**	**119**	**$61,913**	**247**
Unidentified	103,381	36	2,634	6	7,103	20	113,118	62
Total	**$195,229**	**106**	**$64,083**	**175**	**$34,492**	**173**	**$293,804**	**454**

[1]The Northeastern regional office was divided into the Eastern and New England regional offices in fiscal year 1979.

Table XIII.2: Mission-Related Contract Obligations, Fiscal Year 1979

Headquarters' offices	Direct Mission Amount	Direct Mission Number	Mission Support Amount	Mission Support Number	Miscellaneous[a] Amount	Miscellaneous[a] Number	Total Amount	Total Number
Federal Civil Rights Evaluation	0	0	0	0	0	0	0	0
General Counsel	0	0	$2,350	2	$111	1	$2,461	3
Management	$5,100	10	43,438	44	2,554	16	51,092	70
National Civil Rights Issues	14,607	58	774	5	0	0	15,381	63
Program and Policy Review	1,600	1	700	1	498	5	2,798	7
Research	0	0	0	0	0	0	0	0
Staff Director	1,105	2	208	1	12,159	28	13,472	31
Subtotals	**$22,412**	**71**	**$47,470**	**53**	**$15,322**	**50**	**$85,204**	**174**
Regions								
Central States	700	1	635	16	130	2	1,465	19
Eastern	0	0	404	11	0	0	404	11
Mid Atlantic	1,300	3	735	6	12	1	2,047	10
Midwestern	0	0	659	10	285	2	944	12
New England	0	0	1,895	11	24	1	1,919	12
Northwestern	0	0	1,095	8	0	0	1,095	8
Rocky Mountain	0	0	875	3	111	3	986	6
Southern	0	0	1,127	15	973	3	2,100	18
Southwestern	0	0	5,030	21	0	0	5,030	21
Western	0	0	891	11	0	0	891	11
Subtotals	**$2,000**	**4**	**$13,346**	**112**	**$1,535**	**12**	**$16,881**	**128**
Unidentified	283,039	50	25,776	8	6,353	30	315,168	88
Total	**$307,451**	**125**	**$86,592**	**173**	**$23,210**	**92**	**$417,253**	**390**

[a]Amount for miscellaneous includes one contract for $55,000 for the Office of Congressional and Public Liaison.

Table XIII.3: Mission-Related Contract Obligations, Fiscal Year 1984

	Direct Mission		Mission Support		Miscellaneous		Total	
Headquarters' offices	**Amount**	**Number**	**Amount**	**Number**	**Amount**	**Number**	**Amount**	**Number**
Congressional and Public Affairs	$27,261	6	0	0	0	0	$27,261	6
General Counsel	16,000	16	$5,501	1	0	0	21,501	17
Management	750	1	17,140	14	$36,778	57	54,668	72
Program and Policy Review	506,644	3	1,070	4	2,334	10	510,048	17
Staff Director	9,350	14	2,936	2	0	0	12,286	16
Equal Employment Opportunity	0	0	85	1	750	1	835	2
Planning and Coordination	0	0	850	1	0	0	850	1
Unidentified	47,308	5	10,028	5	8,737	44	66,073	54
Subtotals	**$607,313**	**45**	**$37,610**	**28**	**$48,599**	**112**	**$693,522**	**185**
Regions								
Central States	0	0	1,919	12	2,814	12	4,733	24
Eastern	0	0	475	3	536	7	1,011	10
Midwestern	0	0	1,065	13	1,794	7	2,859	20
Northwestern	0	0	0	0	1,197	1	1,197	1
Rocky Mountain	0	0	0	0	1,197	1	1,197	1
Southern	0	0	3,384	14	130	2	3,514	16
Southwestern	0	0	3,265	14	6,715	17	9,980	31
Western	0	0	1,408	9	2,278	17	3,686	26
Unidentified	0	0	100	1	0	0	100	1
Subtotals	**0**	**0**	**$11,616**	**66**	**$16,661**	**64**	**$28,277**	**130**
Total	**$607,313**	**45**	**$49,226**	**94**	**$65,260**	**176**	**$721,799**	**315**

Table XIII.4: Mission-Related Contract Obligations, Fiscal Year 1985

	Direct Mission		Mission Support		Miscellaneous		Total	
Headquarters' offices	**Amount**	**Number**	**Amount**	**Number**	**Amount**	**Number**	**Amount**	**Number**
General Counsel	$14,000	14	$2,799	2	$111	3	$16,910	19
Management	800	1	14,557	11	15,350	30	30,707	42
Programs and Policy	82,742	12	125	1	650	2	83,517	15
Research	300	1	85	1	2,833	12	3,218	14
Staff Director	15,000	5	449	1	0	0	15,449	6
Unidentified	11,750	15	10,056	20	11,993	17	33,799	52
Subtotals	**$124,592**	**48**	**$28,071**	**36**	**$30,937**	**64**	**$183,600**	**148**
Regions								
Central States	0	0	982	14	1,308	7	2,290	21
Eastern	0	0	1,340	10	1,606	11	2,946	21
Mid-Atlantic	0	0	4,815	14	3,195	20	8,010	34
Midwestern	0	0	0	0	522	6	522	6
New England	0	0	190	2	1,072	10	1,262	12
Northwestern	0	0	50	1	1,340	5	1,390	6
Rocky Mountain	0	0	1,381	12	1,850	24	3,231	36
Southern	0	0	147	3	206	1	353	4
Southwestern	0	0	3,423	15	770	1	4,193	16
Western	0	0	72	2	86	1	158	3
Subtotals	**0**	**0**	**$12,400**	**73**	**$11,955**	**86**	**$24,355**	**159**
Total	**$124,592**	**48**	**$40,471**	**109**	**$42,892**	**150**	**$207,955**	**307**

Comments From the U.S. Commission on Civil Rights

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

January 29, 1988

Ms. Rosslyn S. Kleeman
Senior Associate Director
General Government Division
General Accounting Office
Washington, D.C. 20548

Dear Ms. Kleeman:

I have reviewed the draft General Accounting Office (GAO) report of November 30, 1987, on Commission operations between 1978 and 1985 and want to make several points. First, I believe the significance of this report lies in the fact that evidence in it refutes allegations by some persons in Congress and elsewhere concerning management and administration at this agency, particularly since 1983. Those allegations were used as the basis for the ultimately successful effort to cripple the Commission by not only slashing its appropriation severely (from approximately $12 million to $5.7 million) but also by inserting earmarks and restrictions that significantly impede agency program operations. Any careful and objective reader of this report who is familiar with those allegations will see that in such areas as hiring, promotion, and awards with respect to minorities and women, as well as career staff, the composition of the State Advisory Committees (SACs), the compensation of the Chairman and other Commissioners, the work of special assistants to the Commissioners, use of a Commission automobile, and contracting, there is little difference since 1978 in Commission policy or practice, nor has this agency operated illegally or inappropriately. This important and, I believe, justified conclusion is one that I hope GAO agrees should be made prominently in this report.

See pages 9 through 10

On the other hand, the report regrettably falls far short of achieving its basic purpose of providing extensive information on pre-1983 Commission management and administration. It is my understanding that this report was intended to be a companion to the 1986 GAO report covering the years 1983-1985, so that comparable information on earlier years would be available to compare with the more recent data. GAO notes that little information was available from the period 1978-82 to provide in this report. This is disappointing since I believe that more such information would further support the finding of basic continuity and also serve to identify areas, in addition to inadequate recordkeeping with respect to hiring of consultants,

See comment 1.

where certain administrative problems were inherited by Commission officials in 1983. A good deal of material in this report thus is something of a rehash of the previous GAO report, again focusing on the later years.

Now on page 8

Further, I must object to the unfair or misleading manner in which some data and other information are presented. The discussion of the SACs illustrates this concern. Specifically, the report (pp. 11-12) concludes briefly that headquarters officials were much more involved than in the past in selecting SAC members during the 1985 rechartering, that the rechartered committees "are" obtaining "less input" from regional staff in "identifying issues to examine," and that more SAC reports were issued and meetings held in the "earlier years." These are presented as GAO's main findings or highlights, clearly negative, with respect to the SACs.

See comment 2

Now on page 77

Serious questions arise, however, with respect to the justification for these findings as one delves into the data relegated to appendices and tables. For example, GAO says in Appendix XI (p. 98) that as a result of the rechartering there was an increase in white membership and decrease in female membership. The essential data -- the actual composition of SACs after the 1985 rechartering -- are never mentioned at all in the text of this report. As Table XI.1 shows, however, and as GAO should have made clear to the reader, black representation on the SACs was over 25 percent after the rechartering, far above the proportion of blacks in the general population and down only three percentage points from the black proportion in 1982. The same table also shows that Democrats increased as a percentage of rechartered SACs (during a Republican administration) and women were over a third of SAC members. Representation of other minority groups also was comparable to, or exceeded, their proportion of the national population. These key data rebut the inference that some kind of "purge" took place in the 1985 rechartering. This fundamental point is totally ignored in the report. Beyond that, moreover, GAO should add the important points that attendance problems among SAC members and possible agency noncompliance with a Federal regulation requiring "divergent points of view" among Federal advisory committee members were basic reasons for greater headquarters' involvement in the 1985 recharters.

See page 77

See comment 3

Now on page 78

With regard to GAO's point concerning "less input," it is based on the comments of "several" of 12 regional staff GAO interviewed (Appendix XI, p. 98). It is not necessarily the consensus of most of those staff that this was true, and as GAO should know, such perceptions can result from staff

misinterpretation or misunderstanding of headquarters' policy. To highlight a finding based on such limited perceptions is irresponsible social science. In addition, GAO's use of the present tense ("committees are obtaining less input from regional office staff," p. 12, emphasis added) implies that this is a current observation, when in fact it reportedly was made many months ago.

Now on page 8

In addition, it is only when one reads the appendices and tables very carefully that one finds a perfectly reasonable explanation for the declining number of SAC reports, namely, the fact that both headquarters and regional staff decided to emphasize community forums and related briefing memoranda, instead of traditional SAC reports, the quality of which I understand has long been of concern at Commission headquarters. Instead of making this important point at the outset of the report and citing the number of briefing memoranda, rather than reports, completed, GAO leaves it up to the reader to uncover the more pertinent data, now basically buried in the report, that leaves its findings on the SACs unfair and misleading.

See comment 4

Similar problems exist elsewhere in this report. For example, the report fails to make the key point that travel accounts to a considerable degree for the increase in billable days for me as current Chairman. As you must know, I am a resident of California, while my predecessor resided in the Washington area. In addition, the report is unjustifiably speculative or conjectural when it says (p. 10) that some travel payments, particularly for my travel, "may" be "unauthorized..." GAO could just as well have said such payments are not necessarily unauthorized, or there is no evidence that such payments are unauthorized. Similarly, GAO suggests (p. 11) that some of my public speeches "appeared" to represent violations of antilobbying restrictions. This kind of negative conjecture is highly offensive and unfair. I urge GAO to review the entire report to assure that all basic findings, and critical supporting evidence, rather than a statement of the allegations and only fragmentary and misleading material, are presented clearly at the beginning of the report.

See pages 9 and 10

See comment 5
Now on page 6

See comment 6
Now on page 7

In closing, may I observe that, as this report provides information through the first quarter of fiscal year 1986 and we have now begun the second quarter of fiscal year 1988, there have been developments concerning Commission management and administration not noted in the report. For example, new budget and personnel staff have been hired, and those staff now use personal computers, rather than rely on manual handling for recordkeeping. Further, the Commission has joined with many other Federal agencies in contracting with the National Finance

See page 10

Center, Department of Agriculture, for various services that will assist us in meeting technical Federal administrative requirements. As Chairman of the Commission, I naturally continue to support every possible effort to assure effective and responsible management and administration at the Commission.

Thank you for allowing the Commission the opportunity to review and comment on this report. I ask that you include this letter as part of your final report. I trust that your final report will reflect a decision by GAO and some in Congress to halt what has been a political assault against the current Commission.

Sincerely,

CLARENCE M. PENDLETON, JR.
Chairman

The following are additional GAO comments on the U.S. Commission on Civil Rights' letter dated January 29, 1988.

1. On March 25, 1986, we testified before the House Subcommittee on Civil and Constitutional Rights on certain operations of the Commission during fiscal year 1983 through the first quarter of 1986. We did not issue a report on the Commission's operations during this time frame because of the request by five Members of Congress that we expand our work to include Commission operations back to fiscal year 1978. This is the first report issued on the operations of the Commission, and it covers both the earlier and later years. Limited information was available from the Commission for periods before fiscal year 1983; and for fiscal year 1983 and later years, some records that should have been available from the Commission were missing or incomplete.

2. The composition of state advisory committees during fiscal years 1979, 1981, 1982, and 1985 is included in table XI.1 on page 80 of this report and certain characteristics are highlighted on pages 9 and 77. The question of whether the membership composition of the committees was proportionate to the national population is an issue outside the scope of our review. As discussed on page 76 of this report, Commission regulations require that the membership of each committee be reflective of the various population groups in each state, not that the aggregate population characteristics of the nation be reflected in the committees as a whole.

3. On pages 8 and 78 of the report we changed "several" to "nine" regional officials in response to the Chairman's comments. As stated on page 75, the 12 regional officials we interviewed were judgmentally selected, and we did not suggest that their views represented those of all regional officials. Also, we agree with the Chairman that our use of the present tense in the draft report concerning the committees obtaining less input from regional office staff implied a current observation. We made appropriate changes on pages 8 and 78.

4. We have revised pages 8 and 78 to more fully recognize the Commission's use of briefing memoranda.

5. To clarify presentation of our findings, we made the language in the report more specific and pointed out that none of the 60 instances of outside sources paying for travel expenses was supported by the written authorization required under OPM regulations. Changes were made to pages 6, 7, and 59 of the report.

6. We continue to believe that the Chairman's speeches contain the type of remarks the antilobbying restrictions applicable to federal employees attempt to limit.

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